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99TH CONGRESS *1st Session*	SENATE	REPORT 99-50

CLEAN WATER ACT AMENDMENTS OF 1985

REPORT

OF THE

COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS UNITED STATES SENATE

TO ACCOMPANY

S. 1128

together with

ADDITIONAL VIEWS

MAY 14 (legislative day, APRIL 15), 1985.—Ordered to be printed

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CLEAN WATER ACT AMENDMENTS OF 1985

MAY 14 (legislative day, APRIL 15), 1985.—Ordered to be printed

Mr. DOLE (for Mr. CHAFEE), from the Committee on Environment and Public Works, submitted the following

REPORT

[To accompany S. 1128]

together with

ADDITIONAL VIEWS

The Committee on Environment and Public Works reports an original bill (S. 1128), to amend the Clean Water Act, and for other purposes and recommends that the bill do pass.

GENERAL STATEMENT

The last major changes to the Clean Water Act occurred in December of 1981 with the enactment of the Municipal Wastewater Treatment Construction Grant Amendments. Since then Congress has grappled with reauthorizing the non-title II portions of the Act but has been unable to pass legislation. In the 97th Congress and again in the 98th Congress the Subcommittee on Environmental Pollution held numerous hearings on the regulator portions of the law. Although a bill was reported from the Committee on Environment and Public Works in the 98th Congress it was not considered by the Senate.

With the expiration of the title II construction grants program at the end of fiscal year 1985, the Subcommittee on Environmental

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Pollution again set out to develop legislation—this time to reauthorize both the regulatory and grants provisions of the Act.

S. 53, a bill almost identical to one reported by the Committee last year, and S. 652, which dealt primary with the construction grants proram, provided the basis for the Subcommittee's hearings. Three days of hearings were held on the two bills. Witnesses included representatives from the Administration, environmental and industry organizations, State and local governments, financial experts, and other interested persons.

Several major themes evolved during the hearings. First, the Clean Water Act is sound and significant progress is being made by industries and municipalities in removing pollutants from their discharges. Second, several provisions of the law must be tightened to assure compliance with water quality standards and provide for greater control of toxic, conventional, and nonconventional pollutants. Third, programs to control pollution from nonpoint sources are necessary if the goals and objectives of the Clean Water Act are to be achieved. Finally, the current construction grants program must be continued at its present level of funding through 1991 while providing for a gradual transition that assures State and local sufficiency adequate to meet treatment needs.

THE CLEAN WATER ACT

The Clean Water Act provides a comprehensive approach to cleaning up the Nation's waters. It established a regulatory framework for the phased implementation of control technologies for industrial and municipal discharges of toxic, conventional, and nonconventional pollutants. The Act provides for administrative, standard setting, enforcement, and funding mechanisms to achieve the goals of the Act.

The interim goal of achieving a level of water quality that protects a balanced population of both shellfish and wildlife and allows recreation in and on the water by July 1, 1983, was established when the law was enacted in 1972. Although attainment of that goal has not been achieved on a nationwide basis, considerable progress has been made.

According to the Environmental Protection Agency (EPA) substantial reductions have occurred in the discharge of pollutants. Sewage treatment plants are removing about 13,600 tons per day of the two principal conventional pollutants—suspended solids and biochemical oxygen demand (BOD)—an increase of 65 percent over 1973 levels. In July of 1977, 37 percent of the secondary plants required by the Clean Water Act had been completed and by June of 1983 that number had risen to 69 percent.

According to EPA, six key industrial pollutants including phosphate, heavy metals, and dissolved solids were reduced by more than half since 1973.

The EPA has reported that a majority of the Nation's waters, last assessed in 1982, meet the interim Clean Water Act goal of fishable, swimmable waters. Thirty six States have reported specific improvements resulting from the construction of municipal wastewater treatment facilities and 20 States reported improved

water quality due at least in part to pollutant controls implemented by industry.

These trends are encouraging and demonstrate that the basic structure of the Clean Water Act is sound. Some of our more obvious and major pollutant problems created by sewage treatment plants and unregulated discharges by industry are being solved. But new, more subtle, problems must now be addressed. These are problems of devasting toxic substances and pollution from nonpoint sources, such as runoff from farmlands and urban areas.

Fish and shellfish communities are being reestablished in areas where they have been absent for decades because of the reduction of conventional pollutant loadings. Nonetheless hundreds of tons of toxic substances are being discharged into the Nation's waters each year from direct and indirect dischargers. It is indeed ironic that we must now warn people against consuming fish caught in many areas cleansed of conventional pollutants but still contaminated by toxic pollutants.

Toxic pollutants in water, fish tissue, and bottom sediments can come from a variety of sources including industrial and municipal point sources and nonpoint sources. According to the EPA, in 1982, 32 States cited water quality standards violations or use impairments due to toxic pollutants.

In the 1972 amendments to the Clean Water Act, Congress recognized the pervasiveness of toxics when it set as national policy that toxic discharges in toxic amounts be prohibited. The legislation reported by the Committee brings us closer to that goal by reaffirming among other things, the commitment to uniform installation of the best available technology economically achievable (BAT) by all dischargers; a uniform national pretreatment program; a national nonpoint pollution control program; and, the establishment of a "beyond-BAT" program which will require direct dischargers to install more stringent cleanup technology if the best available technology requirements set by EPA are not sufficient to meet State water quality standards because of toxic pollutants.

Although the EPA continues to move forward with developing guidelines for the installation of cleanup technology for both direct and indirect dischargers, the slow pace in which these regulations are promulgated continues to be frustrating. Of the 29 industrial categories established in 1977 for which guidelines were required to be promulgated 5 still remain to be completed. The pretreatment program—requirements controlling discharges into publicly owned treatment systems—is also languishing. Over half of the municipalities required to develop general pretreatment programs are not in compliance and the EPA still has to promulgate regulations for 8 of the 23 industrial pretreatment categories.

The technology-based approach to water pollution control was adopted in 1972 because of the historical ineffectiveness of the previous water-quality-based approach. This approach failed because of uncertainities about the relationship between pollutant loadings and water quality and the association between water quality and health and environmental effects. There are still significant gaps in knowledge of these relationships. Consequently the reported bill reaffirms the technologically based approach established in 1972 as

an immediate and effective method of achieving the goals of the Act.

Congress has had to adjust compliance deadlines in the past in order to give the EPA the opportunity to develop complicated industrial cleanup standards. The current compliance deadline is July 1, 1984, a date which the EPA and many industries have failed to meet because so many of these cleanup standards have not been promulgated in a timely manner. Although the legislation grants an extension of the compliance date, it is limited to assure that these guidelines and standards will be promptly developed and implemented.

WATER QUALITY

Although technology-based BAT controls are the primary driving force behind the Act's cleanup requirements, water quality standards are expected to play a key supplementary role in assuring clean water and, where necessary, in developing aditional control requirements. When the Committee was considering the reauthorization of the Clean Water Act in the 98th Congress, it became deeply concerned over an effort by the EPA to significantly weaken water quality standards regulations. Among other things, the Agency's proposal would have biased the program toward less protective use designations, would have undone the Act's anti-degradtion policy, and would have failed to assure that toxic pollutants are addressed adequately in the water quality standards set by the States.

The Agency, in an agreement with the Committee and under the leadership of Administrator Ruckelshaus, withdrew these proposed changes and promulgated tough new water quality standards regulations.

Several provisions in the reported bill are designed around these regulations to assure they are implemented and enforced properly by the States and EPA. These provisions, which will be discussed further in the report, include new "beyond-BAT" control requirements which are developed, in part, through the water-quality standards setting process, and the anti-backsliding provision which prohibits discharges from backsliding to weaker controls on the basis of water quality-based waste allocation formulas or less stringent standards promulgated by the Agency.

The water quality standards regulations currently in effect are strongly supported by the Committee. During the hearings, the Administration reaffirmed its commitment to implementing and enforcing these regulations through the Act's longstanding anti-degradation policy and other water quality policies.

The principal objective of the Act is the restoration and maintenance of the integrity of our Nation's waters. Every requirement of the statute looks toward cleaner water—never backward toward relinguishing pollution control gains that contribute to meeting that objective. Attainment and maintenance of clean water will not be achieved if it is permitted to be degraded without compelling and overriding reasons. Moreover, if the Act is to accomplish its objectives, the high quality of waters considered to be outstanding national resources must be preserved. Although requirements for des-

ignation of these waters have never been used, the water quality standards regulations should enhance the likelihood that they will in the future.

It is particularly important within the context of water quality standards that regulations be as comprehensive as possible in protecting high quality waters. In order to implement the Act's objective, section 303(c) requires that water quality standards must "enhance the quality of water and serve the purpose of this Act."

Anti-degradation has been a part of the water quality standards scheme for at least 15 years. In 1968, Secretary of the Interior Udall announced a national policy, pursuant to the Water Quality Act of 1965, requiring the States to adopt an anti-degradation provision providing that:

> Waters whose existing quality is better than the established standards . . . will be maintained at their existing high quality. These and other waters of the State will not be lowered in quality, unless and until, it has been affirmatively demonstrated . . . that such change is justifiable as a result of necessary economic and social development and will not interfere with or become injurious to any assigned uses made of, or presently possible in, such waters.

This provision was adopted by States and then carried over into the 1972 Act under section 303(a). EPA's current regulation is consistent with this long-standing policy to the extent it preserves high quality waters, maintains existing uses, and protects national resource waters. In many respects it remains the cornerstone of the entire Clean Water Act.

In part, this is because the States play such a major role. Under sections 301 and 303, the States have primary responsibility to establish the designated uses of their water bodies and the duty to implement standards that protect those uses. These responsibilities and duties must be exercised so as to serve the Act's purposes, and EPA has been assigned the obligation of assuring consistency of State standards with the policies of the Act. Nowhere is that function more important than in reviewing the State's designation of uses under section 303.

Section 303(c)(2) provides that state standards must "protect the public health or welfare, enhance the quality of water and serve the purposes of this Act." The upgrading requirement of EPA's regulation is the principal means by which to assure that standards must enhance water quality and serve the purpose of section 101(a)(2)—to achieve fishable-swimmable water quality. This provision is consistent with the anti-degradation policy, which requires maintenance of high quality water and with the overall purpose of the Act—to restore and maintain the integrity of our waters.

Restrictions on downgrading follow from the goal of section 101(a)(2)—to achieve fishable-swimmable water quality "wherever attainable"—and from the requirement of section 303(c)(2) that State standards serve the purposes of the Act. The concept of "attainability" therefore is central to determining which of the various uses, or combinations of uses, listed under section 303(c)(2) shall be designed and protected.

Attainability means feasibility, not desirability or local preference. It is not a question of whether the Nation wants clean water, but of whether it is possible to achieve clean water without economic or social hardship. EPA should disapprove downgrading of State standards unless it is clearly demonstrated that a use cannot be achieved, or would cause widespread social or economic impacts to do so. Actual, existing uses of waterways must, of course, be protected.

The water quality standards regulation permits downgrading of "aquatic life protection uses" where "natural features of the water body" preclude attainment, or where low-flow conditions prevent use attainment. This change simply means that downgrading may not occur based on physical conditions such as unattractive surroundings, water velocity, difficulty of access, boat traffic or other impediments affecting the ability of people to use a water body. In other words, the regulation requires that uses be maintained to allow water recreation, even though it might be deemed unlikely that substantial numbers of people actually would make such uses of a particular water body.

In those rare instances where degradation of high quality waters is permitted in order to accommodate essential economic or social development, the States must assure water quality adequate to protect existing uses fully by providing for an adequate margin of safety in defining water quality critiera.

Water quality standards are the principal mechanism in the Act for determining how clean—how safe from damage to human health and aquatic life—a stream or lake can be. Since standards assure continued progress toward the Act's goal, it would make little sense to allow deviations, however limited or temporary, from these judgments concerning the health and welfare of people who enjoy and depend on our precious water resources. If economic effects truly are substantial and widespread, then a downgrading of standards may be justified. But this is a considered community wide decision to forego higher beneficial uses of a waterway, and must not be made in the narrow context of a source-specific variance.

In Colorado and some other States, high designated uses established through the water quality standards process have been set for some stream segments. A number of commenters have argued that the EPA water quality regulations restricting the modification of water quality goals make it unnecessarily difficult for States to respond in a reasonable fashion to changing circumstances and unforeseen difficulties.

Municipalities and industrial interests in Colorado have indicated this problem appears to be particularly acute where there are low or intermittent flows in receiving streams. This can be caused by natural variations or limitations in runoff, or by man-made diversions or impoundments authorized by State laws governing the allocation of water. The natrual presence in receiving waters of toxic metals can also pose problems for attaining designated uses. In addition, the reduced availability of Federal funding for advanced waste treatment could increase the economic difficulty faced by affected municipalities in attempting to attain water quality standards.

It has been suggested that States be given the authority to downgrade the designated uses of these stream segments through the NPDES permit issuance process. The Committee recognizes the existence of this problem, but it is not convinced that a statutory response is necessary. Instead, the Act and EPA regulations provide an appropriate mechanism for downgrading water quality standards where standards are unattainable.

For example, it has been suggested that some water quality standards in Colorado initially were established without regard to their attainability. If so, the State may review these uses and, if they are found to be unattainable, revised standards may be adopted.

EPA regulations set forth procedures for modifying inappropriate standards through an intergovernmental at review process which provides an opportunity for public comment. Thus, for example, standards can be downgraded due to low flow conditions, hydrologic modifications that prevent attainment of the use designated in the standard, natural physical conditions of the stream that preclude attainment of the aquatic life protection use, or if controls needed to meet the standard would result in substantial or widespread economic impact.

None of these criteria lend themselves to a precise, uniform national definition. In reviewing State proposals to downgrade water quality standards pursuant to these criteria, EPA policy should be flexible enough to accommodate regional variations. For example, in States such as Colorado that are rich in mineral resources, some streams may exhibit natural background concentrations of toxic metals that preclude attainment of a sensitive cold water fishery though other environmental parameters, such as temperature and dissolved oxygen, would sustain such a fishery. In such cases, EPA should recognize the unique hydrogeologic character of such streams and allow the State appropriate flexibility in defining the nature of the aquatic life protection use.

Water quality-standards, effluent guidelines and limitations are translated into National Pollution Discharge Elimination System Permits (NPDES) to assure compliance with control requirements. The Committee reconsidered a provision it approved in the 98th Congress to extend the maximum term of NPDES permits to ten years and to require that permits be reopened and revised under certain conditions. This bill does not contain such a provision. The reported bill therefore reaffirms present law regarding permit terms as the most effective way to assure that discharges of toxic and other pollutants are brought under control in the most timely fashion.

NONPOINT SOURCE POLLUTION

During the course of the Clean Water Act reauthorization process during the 98th Congress, it became clear that nonpoint source pollution could no longer be ignored. This form of water pollution includes runoff from agricultural and mining areas, and construction sites. It includes sediments, pesticides, fertilizers, bacteria, toxic metals and other serious pollutants. As point sources are brought under control, nonpoint source pollution looms as a larger

and larger problem. The evidence of nonpoint pollution continues to grow. It has been estimated that 50 percent of all water pollution comes from nonpoint sources.

The legislation takes an important first step in establishing a national nonpoint source program. States are encouraged to implement management programs that will target critical areas, identify the sources of nonpint pollution, identify best management practices, and set timetables for program implementation. Funds would be allotted to States to support their implementation of these programs.

The nonpoint source pollution provisions are virtually identical to those reported by the Committee in the last Congress. There are, however, several changes as a result of testimony presented in the Subcommittee's hearings. States may use up to 1 percent of their allotment funds from the construction grants program to supplement funding authorized under the nonpoint program, and nonpoint source programs shall include an assessment of the relationship between nonpoint pollution and groundwater. These provisions are discussed further in the report.

CONSTRUCTION GRANTS

Since enactment of the Clean Water Act in 1972, over $56 billion has been spent on constructing publicly owned treatment works (POTWs). The Federal Government has contributed over $40 billion with State and local governments contributing the remainder. These large expenditures have produced significant water benefits across the Nation. By 1982 there were over 15,000 waste treatment plants in operation and the number of persons receiving secondary or greater treatment increased by 67 percent (from 1972) while population increased only 11 percent.

These benefits were, in part, achieved through a strong Federal role provided in the 1972 amendments. However, while increasing Federal aid ($18 billion in contract authority) and expanding the Federal grant share (75 percent of eligible project costs), Congress also recognized that this initial level of Federal financial assistance was temporary and expected States and municipalities to eventually assume full responsibility for the operation, maintenance and replacement of constructed facilities.

The shift to ultimate State and local responsibility was started in 1977 with amendments that increased the State role in managing the program. The 1981 amendments to the construction grants program brought about major reforms in the program and signaled a gradual transition from a high level of Federal financial involvement to greater State and local responsibility. Changes were made to refocus the program on water quality goals. Funding for combined sewer overflows and "growth" related categories such as collector sewers and future population were eliminated. These Federal share was reduced from 75 percent to 55 percent and the program's authorization level was reduced from $5 billion to $2.4 billion per year. The reform assured that funds would be appropriated to the full authorized level.

The major issue facing the municipal pollution control program today is how to manage a continued transition to State and local

responsibility and self-sufficiency, while asssuring timely completion and continued compliance of all municipal facilities. The $40 billion investment made by the construction grants program since 1972 should be protected by leaving in place adequate institutional and financial mechanisms at the State and local level. Only through a sound financial mechanism will the needed capital improvements for municipal wastewater treatment be financed and progress in water quality improvements be maintained.

Title II of the reported bill calls for the creation of State Water Pollution Control Revolving Funds which continue the transition started with the 1981 amendments while assuring that construction of necessary facilities continues to move forward. Under this program, the Federal Government will gradually reduce straight categorical grants for POTWs and, in their place, provide money for States to establish loan funds. Using Federal money for loans, States can make low interest loans available to their communities for construction of treatment facilities.

A successful transition will require a more extended period of time and a shift in the type of Federal assistance provided. To provide for the transition, the reported bill establishes a State Water Pollution Revolving Loan Fund (SRF) under a new title VI of the Act. These SRF's if properly managed, will provide a capital base for financing municipal wastewater treatment facilities far into the future. Once established and credited with repayments from the initial loans made with the Federal capitalization grant funds, the SRF's will generate a stream of revenues that will enable a State to leverage the initial funds many times over.

The reported bill would provide for a phase-out of the title II construction grants program over a five-year period, while the new title VI that would authorize assistance for States through the establishment of State-administered revolving loan programs. Taken together, the authorizations for titles II and VI would continue Federal assistance for municipal wastewater treatment over a nine-year period (1986–1994). Although this authorization period is beyond those typically included in previous amendments to the Act, it is needed for States and municipalities to plan effectively for assumption of increased funding responsibilities.

The reported bill extends the current $2.4 billion annual authorization for title II construction grants for three years. In fiscal years 1989 and 1990, the annual authorization for title II would be reduced to $1.2 billion. No further authorizations would be made for title II after fiscal year 1990.

During this five-year period, States would be provided with sufficient lead time to begin setting up State revolving loan programs. The bill encourages the creation of these self-sustaining financing entities at the earliest opportunity by providing each State with an option of converting title II construction grants funds into capitalization grants for SRF's.

Beginning in fiscal year 1989 and continuing in fiscal year 1990, $1.2 billion a year would be authorized specifically for capitalizing SRF's under the new title VI. In fiscal year 1991, the amount would be increased to $2.4 billion. Thereafter, the SRF authorization would gradually be reduced by providing $1.8 billion in fiscal year 1992, $1.2 billion in fiscal year 1993, and $600 million in fiscal

year 1994. After fiscal year 1994 all authorizations for direct Federal contributions to municipal wastewater treatment of SRF's would be ended. (See chart below:)

[In billions of dollars]

Fiscal year	Construction grants (title II)	Revolving loan fund (title VI)
1986	2.4	
1987	2.4	
1988	2.4	
1989	1.2	1.2
1990	1.2	1.2
1991		2.4
1992		1.8
1993		1.2
1994		.6

The total authorizations for title II and VI amount to $18 billion and will assure that the core treatment-related needs identified in the 1981 amendments will be met.

SECTION-BY-SECTION ANALYSIS

TITLE I

AUTHORIZATIONS

The reported bill continues authorizations for a number of programs, most of which have existed since the Federal Water Pollution Control Act (now referred to as the Clean Water Act) was enacted in 1972. These include research, manpower training, forecasting, grants to State and interstate water pollution control agencies, training grants and scholarships to institutions of higher education, grants for the Clean Lakes program, and authorizations for all other sections of the Act for which funds are not specifically authorized elsewhere. Authorizations contained in this section continue these programs at fiscal year 1982 levels for fiscal years 1984 through 1987.

Section 104(u)(1) is amended to authorize $22,770,000 annually for such activities as research technical services, investigations, monitoring and coordination.

Section 104(u) is amended to provide $3 million annually for the manpower development training program provided for by section 104(g)(1). This program provides assistance to States and other entities to develop trained personnel to operate and maintain sewage treatment works. $1.5 million is authorized annually for the employment needs and forecasting program provided for by section 104(g)(2).

Section 106(a)(2) is amended to provide $75 million annually for grants to States and interstate agencies to assist them in administering programs for the prevention, reduction, and elimination of

pollution, including enforcement directly through appropriate State enforcement officers or agencies

Section 112(c) authorizes $7 million per year for the program of training grants and scholarships to institutions of higher education to assist them in carrying out programs for the preparation of undergraduate students to enter water quality control-related occupations. This program is provided for by sections 109, 110, 111, and 112 of the Clean Water Act.

Section 314(c)(2) is amended to authorize $30 million annually for grants to States for assistance in determining the eutrophic conditions of publicly-owned freshwater lakes, ways of controlling pollution in those lakes, and methods of working with Federal agencies to restore lake water quality.

Finally, $160 million per year is authorized for section 517 for carrying out provisions of the Clean Water Act for which funds have not otherwise been authorized.

SMALL FLOWS CLEARINGHOUSE

This section amends section 104(q) of the Act to use a portion of the funds set aside for innovative and alternative (I&A) technologies, but not obligated within the 2 year deadline, to fund the Small Flows Clearinghouse. This Clearinghouse was established under the 1977 amendments to collect and disseminate information on alternatives to traditional expensive community-wide sewage treatment systems, suitable for rural settings and individual or cluster application. The purpose of the Clearinghouse is to assure the better utilization of the I&A set-aside money.

At the end of the last two obligation periods, several million dollars remained unobligated and had to be reallotted. The amendment dedicates $1 million of that to funding the Clearinghouse. Previously, the Clearinghouse has received funds through the Agency's research budget, which has provided too little funding to carry out assigned tasks. The arrangement has been unsatisfactory to the Office of Research and Development and the Office of Water.

Recently the Clearinghouse, currently operated under contract with West Virginia University, was consolidated with another data base owned by the Agency at Research Triangle Park. This has put an additional strain on the Clearinghouse's resources. The amendment will help the Clearinghouse provide an accelerated program of information dissemination and technology transfer, so that small communities can meet the Act's requirements at affordable costs by using alternative technologies and alternative financing and managing arrangements. Funds available under this amendment will also assist State and local authorities who are responsible for small communities in developing programs that assure implementation of the most affordable possibilities. The National Clearinghouse will accomplish this through increased access to existing databases, the preparation of new training materials for both technological and administrative alternatives, and delivery of training programs tailored to the needs of individual States. Cooperation of appropriate State agencies in addressing their unique needs at the State and local level should be sought. For example, the State of Alabama has indicated a desire to cooperate with the National

Clearinghouse to develop and deliver a Statewide program for small communities.

COMPLIANCE DATES

The reported bill extends deadlines for compliance with several technology-based requirements of existing law. Section 301(b)(2)(C) is amended to require compliance with best available technology (BAT) effluent limitations for toxic pollutants as expeditiously as practicable but not later than three years after promulgation of the effluent limitations, but in no case later than July 1, 1988.

Under section 301(b)(2)(E) as amended, best conventional pollutant control technology (BCT) effluent limitations for conventional pollutants must also be complied with by those deadlines. Compliance with BAT effluent limitations for nonconventional, nontoxic pollutants under section 301(b)(2)(F) as amended is required not later than three years after such limitations are promulgated but in no case later than July 1, 1988.

A new paragraph (3) is added to section 301(b), providing that best practicable control technology (BPT) effluent limitations promulgated after January 1, 1982, which require a level of control substantially greater or based on fundamentally different control technology than limitations in the permits for such industrial category issued before that date, shall be complied with as expeditiously as practicable but not later than three years after promulgation of the effluent limitations but in no case later than July 1, 1988.

New section 302(b)(3)(B) provides that effluent limitations established in permits issued after enactment of these amendments on the basis of best engineering judgment or best professional judgment, in lieu of effluent guidelines for BPT, BAT, or BCT for toxic conventional or nonconventional pollutants, shall be complied with as expeditiously as practicable but no later than three years after such limitations are established in the permit (and in no case later than July 1, 1988). These extensions only affect deadlines for technology-based effluent limitations for direct dischargers. They do not affect pretreatment compliance dates.

The Clean Water Act currently mandates that industry achieve effluent limitations based on BAT for all toxic pollutants, and BCT for conventional pollutants, no later than July 1, 1984. BAT for nonconventional pollutants must be achieved by three years after promulgation but no later than July 1, 1987.

These target dates were enacted in the expectation that the Environmental Protection Agency would promulgate in a timely fashion for the 26 major industrial categories to be regulated. The Agency has not met this expectation. Under court order, the Agency is now required to promulgate all remaining standards by March, 1986.

It was impossible for many of these 26 industries to meet the 1984 compliance deadline. As documented in hearings before the Subcommittee on Environmental Pollution, most industries require three years after promulgation of effluent limitation guidelines to design and construct necessary facilities. This section incorporates this three-year period into law.

In extending these compliance deadlines, the Committee emphasizes that dischargers are to comply with technology standards as expeditiously as practicable, regardless of the outside limits prescribed by this legislation.

Section 301(b)(3)(A) is intended to allow a discharger a reasonable amount of time to alter existing BPT treatment equipment or install new or additional treatment where necessary to meet more stringent BPT discharge requirements. Dischargers who had never previously received a permit would be required to meet the new BPT effluent limitations upon commencement of discharge. For previously permitted dischargers compliance should be required as soon as practicable. In some cases, where the treatment facilities in place are capable of meeting the new limitations, this may require immediate compliance. Additional time to meet new limitations should only be given where the level of control required by the new limitations is substantially greater than that required by the existing permit or where the new limitations are based on new or significantly different control technology.

New section 301(b)(3)(B) establishes compliance dates for effluent limitations based on the permit writer's best professional judgment under section 402(a)(1) of the Act. BPJ limitations may be imposed either where effluent limitations guidelines under section 304(b) have not been established or where limitations in addition to the guideline are necessary to control pollutants or wastestreams not addressed by the guideline regulation. This section would not alter the compliance dates established in section 301(b)(2) for permit effluent limitations based on an effluent limitation guideline. In cases where the permit incorporates limitations based on both an effluent limitation guideline and additional limitations under section 402(a)(1), the compliance dates established in section 301(b)(2) would govern the guideline-based limitations and the compliance dates established in this subsection would govern the section 402(a)(1) limitations. In addition, it is often the case that a wastestream controlled by an effluent limitations guideline is combined with a process wasterstream or a non-process wastestream, such as non-contact cooling water or sanitary wastes, controlled by BPJ limitations, prior to discharge. Where the discharged wastestream is controlled by a combination of both a guidelines based limitation and a BPJ limitation, the compliance dates established in section 301(b)(2) would govern.

OCEAN WAIVER

This section amends section 301(h) of the Act to restrict the availability of modifications of the uniform secondary treatment requirement for discharges to ocean waters. It is identical to the provision reported by the Committee in the 98th Congress.

When section 301(h) in 1977 was enacted, it was intended that only municipalities with primary treatment capability discharging into deep and unstressed waters be considered for these modifications. It was expected that a number of West Coast and very few East Coast communities could meet the conditions laid out in section 301(h) to obtain a modification. However, Court decisions have blurred the intent of Congress so that both East and West coast

communities discharging sometimes untreated sewage effluent can expect to receive modifications. This should not be the case.

This section establishes restrictive conditions on the qualifications of applicants for a section 301(h) modification and the ocean waters into which they discharge. In order to apply for a section 301(h) ocean discharge modification, a municipal treatment facility must be in compliance with applicable pretreatment regulations. In the absence of Federal categorical pretreatment standards, treatment works serving a population of 5,000 or more persons must be enforcing a comparable pretreatment program to assure the control of toxic pollutants at the time of application.

Current regulations require communities to develop pretreatment programs. This amendment makes it clear that Congress intends that no final modification should be granted unless the applicant has satisfied this requirement. By the time of approval, the applicant must have an approved pretreatment program with which indirect discharges are in compliance. Failure to meet this requirement will result in denial of modification where non-compliance among indirect dischargers is widespread. However, it is not the intent that EPA deny modification to POTWs which are diligently implementing a pretreatment program merely because an insubstantial percentage of indirect dischargers with a trivial amount of flow are not in compliance with pretreatment requirements. The Administrator should exercise discretion in determining the significance of non-compliance and examine the measures the POTW is taking to assure compliance and implement an effective pretreatment program. Emphasis should be placed on overall compliance, as well as focusing on individual indirect dischargers which may not be in compliance.

The applicant must also be providing a minimum of primary treatment of their municipal effluent, including disinfection where appropriate, at the time the modification becomes effective. Section 301(h) was never intended to authorize the discharge of untreated sewage. This amendment makes clear that operating primary treatment is a minimum to qualify for a modification.

Flexibility is provided for the Agency to deal with unique problems in Alaskan Villages and the Trust Territories where screening and skimming of waste may consitute primary treatment and be sufficient, provided that all other section 301(h) criteria are otherwise satisfed.

Marine bays and estuaries represent some of our most productive biological areas and deserve to protected against degradation. Two amendments to section 301(h) have been made for that reason. The first amendment clarifies that marine waters receiving discharges must exhibit characteristics which assure that the diluting water does not contain significant amounts of effluents previously discharged from the POTW. While this amendment deals with "marine waters" it is expected that it will have its greatest impact on marine bays and estuaries. It is intended to be used as another test by the Agency in evaluating discharges into these waters to make certain that sufficient flushing exists so as not to allow entrapment of previously discharged waste. While this provision does not affect any tentative approvals granted to date, it is expected to

give the Agency an important guideline for future review of applicants' discharges into marine waters.

The second amendment to section 301(h) deals with discharges into stressed waters. The amendment provides that a section 301(h) modification may not be issued for estuarine waters if, at the time of application, the waters do not support a balanced indigenous population or allow recreational activities, or exhibit water quality below the water quality standards adopted to protect public water supplies, wildlife, or recreational activities. The prohibition applies regardless of any causal relationship between such characteristics and the applicant's discharge. This provision is intended to disallow effluent discharges into estuarine waters which have been stressed by previous or existing pollution by other point and nonpoint discharges.

For the purpose of section 301(h)(8)(B) the term "balanced indigenous population" is defined as the community that can reasonably be expected to occur in a given area absent pollution. Its existence is generally determined by comparing the ecological community in question to that of nearby healthy communities existing under comparable but unpolluted physical and environmental conditions.

Again, attention is given to saline estuaries receiving discharges which are not achieving the interim water quality goal of the Act. It is intended that applicable water quality standards refers to standards for BOD, SS, DO, and toxic pollutants. The phrase "such other standards" necessary to assure support and protection of such uses refers to marine water quality criteria necessary to support these uses.

Waivers from secondary treatment for discharges into marine estuaries should be given special reviews from the Agency, when the estuaries are stressed from a combination of sources. Partial treatment of sewage into already polluted estuaries should not be allowed. Previously EPA looked at only the source seeking the modification in making its determination. Under this amendment the Agency cannot grant a modification for a discharge into an estuary whether or not the responsibility for the failure to meet the interim goal of the Act lies with the discharger. Waiving treatment requirements for a point source discharging into an unhealthy body will not result in reasonable further progress toward achieving the goals of the Act.

Conditions are placed on the characteristics of the offshore waters into which the applicant plans to discharge. Marine waters must exhibit physical and tidal characteristics which would assure sufficient flushing action to eliminate significant concentrations of municipal effluent discharged. The level of effluent concentration should not result at any time in a deleterious effect on the chemical or biological quality of marine waters or their uses.

Section 310(j) is amended to allow a period of thirty days after enactment for a publicly owned treatment works with an existing contract to discharge its sewage into another treatment works which has applied for a section 301(h) modification, in which to apply for such a modification in its own right. This is intended to accomplish a narrow, specific purpose: to provide an opportunity for the Irvine Ranch Water District, a California public agency (or its successor agency, District 14), to apply for a modification under

section 301(h). This district, which currently has a contract to discharge through the Orange County Sanitation District outfall, had been operating on the assumption that its discharge was accommodated in the application for modification by the Orange County Sanitation District and thus the district did not apply during the period allowed by the 1981 amendments.

The Irvine Ranch Water District has made a legitimate case for special consideration, but the amendment is intended to exclude any other opportunities for application for modification under this provision. The only special consideration provided to the District is the opportunity to apply for the modification. Prior to its discharge into the ocean, either through its own outfall or through Orange County Sanitation District's outfall, the District must comply with the provisions of section 301(h). The amendment limits the opportunity for application to 30 days after enactment. The Environmental Protection Agency, however, should provide the District with the time necessary to demonstrate compliance with the requirements of section 301(h) so long as the application is promptly submitted within the time required and the District demonstrates due diligence in meeting the requirements for a modification. The discharge to which the modification would apply could be direct to the ocean through an IRWD/District 14 ocean outfall or through the ocean outfall of the party with which that contractual arrangement exists.

MODIFICATION FOR NONCONVENTIONAL POLLUTANTS

The bill amends section 301(g) of the Act to restrict the circumstances under which a modification from best available technology standards (BAT) can be granted for nonconventional pollutants. Nonconventional pollutants are defined as pollutants other than conventional pollutants identified pursuant to section 304(a)(4) of the Act, toxic pollutants subject to section 307(a) of the Act, or the thermal component of discharges.

Current law allows modifications to BAT standards for nonconventional pollutants if, upon a showing by the discharger, such modification will result, at a minimum, in compliance with best practical treatment; will not result in additional requirements on point and nonpoint sources; and will not result in unacceptable risks to human health or the environment or interfere with the attainment of maintenance of water quality standards.

According to the EPA, scientific data on a great number of nonconventional pollutants are non-existent or very limited. There are very few data on toxicity, and testing methods are often inadequate to determine effects on human health and the environment for a number of these pollutants. Some 55,000 identified compounds could technically qualify for modification of best available technology requirements. The Agency's resources to make decisions on modification applications are inadequate. EPA has estimated that it takes between one-half and two years; between .75 and 3.5 full time employees; and between $20,000 and $50,000 to process a modification.

In the past, proposals for water quality-based waivers for toxic and conventional pollutants have been rejected by the Congress.

During the hearings the Subcommittee learned that, in many cases where information exists, nonconventional pollutants can be highly toxic to humans, fish and other aquatic organisms, and wildlife. What distinguishes many of these substances from the 307(a) toxics is simply that they are not yet on the toxics list. In fact, many nonconventional pollutants are greatly more toxic than toxic pollutants on the 307(a) list.

Nonconventional pollutants should be treated no differently from toxic or conventional pollutants, except in a very limited fashion. Thus, the amendment to section 301(g) allows modifications to BAT guidelines only for five well studied nonconventional pollutants—ammonia, chlorine, color, iron and total phenols (4AAP). EPA has developed adequate information on these pollutants as a result of currently pending applications for modifications from the iron and steel and steam electric industries.

The Administrator may evaluate additional nonconventional pollutants and recommend to Congress that they are eligible for inclusion under section 301(g), but any such recommendation must be enacted by Congress to become effective. The Administration, however, is expected to add any nonconventional pollutants to the section 307(a) toxic pollutant list, if such evaluations warrant.

The provision also limits to one year the time in which the Administrator can make a determination on a request for a modification under section 301(g)(4). The discharger must, in its application, make an affirmative showing that the discharge will meet the conditions in section 301(g)(A), (B) and (C). Simply asserting that there is no evidence that the substances harms human health or the environment is insufficient. For the purposes of this provision, final Agency action means the administrative decision document or final permit issued by EPA, following public notice and comment as appropriate.

Section 301(g)(5) clarifies that this amendment applied to all modification requests under this subsection which are pending upon the date of enactment of the Clean Water Act Amendments of 1985. Specifically, for such pending requests, this provision is intended to restrict EPA's consideration to requests for modification to only those five nonconventional pollutants listed in section 301(g)(1) as amended. Pending requests for modification for other nonconventional pollutants cannot be granted and therefore will not be acted upon. For completed applications pending at the time of enactment of the Clean Water Act Amendments of 1985, EPA must take final Agency action within one year of the date of submission of the completed application to EPA, or under section 301(g)(4) the application will be deemed to be denied. This restriction applies specifically to completed applications as defined in EPA's regulations. Applicants with pending initial applications filed in accordance with section 301(j) may file completed application within a reasonable time after enactment.

EPA has stated that applications for modification under section 301(g) have effectively stalled, or stayed, new permits from being issued to applicants. These situations prevent the installation of best available technology controls for all pollutants in the discharge, even those that are not subject to the modification request, until a decision on the modification is made by the Agency. As

stated previously these decisions can take up to two years or more. As a result, toxic and conventional pollutants may continue to be discharged into receiving waters while the application is pending. To address this situation, the bill amends section 301(j) of the Act to forbid the stay of any requirements or limitations for any pollutant other than for the pollutants for which a section 301(g) modification may be sought. Thus, for example, if a discharger applies for a modification for chlorine, such application shall not, under any circumstances, stay the discharger's obligation to comply with the applicable effluent guideline which requires control of toxic, conventional or other nonconventional pollutants to meet the compliance deadline, nor may the Administrator or a State extend the compliance deadline for any applicant.

If a modification is granted under this subsection, the applicant is expected to make a new demonstration each time the applicable permit expires, for such modification to be granted in the future.

FUNDAMENTALLY DIFFERENT FACTORS

This section authorizes the Administrator to grant fundamentally different factors (FDF) modification and defines the conditions under which the Administrator may do so.

A FDF modification is an administrative mechanism to provide an opportunity for relief from the application of national effluent limitations guidelines and standards for categories of existing sources for toxic, conventional and nonconventional pollutants. EPA will write a separate effluent standard for an individual facility if the factors that govern standard setting are found to be fundamentally different at the individual facility from the factors considered in establishing the guideline or standards for the industrial category.

The Agency has, by regulation, created an opportunity for FDF modifications from national categorical effluent standards for direct discharges for best practicable control technology currently available (BPT) under section 301(b)(1)(A), best available technology economically achievable (BAT) for toxic and nonconventional pollutants under section 301(b)(2), and best conventional pollutant control technology (BCT) for conventional pollutants under section 301(b)(2). For indirect dischargers (those discharging to a publicly owned treatment work rather than directly to a surface waterway), FDF modifications are available for pretreatment standards for existing sources (PSES) under section 307(b).

EPA's authority to grant FDF modifications has been challenged in several different courts. Recently, the Supreme Court held that the Clean Water Act does not prohibit the granting of FDF variances from pretreatment standards for existing sources for toxic pollutants (*Chemical Manufacturers Assn.* v. *Natural Resources Defense Council, Inc.*, No. 83-1013—U.S. Feb. 27, 1985).

As a result of this decision, EPA is issuing FDF modification without explicit statutory authority and without statutory definition of the conditions under which such modification may be issued. Current law requires the Administrator to set national effluent limitations guidelines and categorical pretreatment standards for an entire industrial category or subcategory. The amend-

ment imposes additional restrictions, beyond those in EPA's current rules, on the Administrator's ability to modify national standards for individual facilities seeking an FDF modification.

Relief, in the form of alternative effluent limitations or standards, may be granted only if the applicant makes satisfactory demonstrations to the Administrator under all provisions of this subsection. Relief may not be granted without the concurrence of the State.

The Administrator is expected to use this authority only rarely and only to create a separate standard for a facility so unique that it would have required a separate subcategory had EPA given it adequate attention in the national rulemaking. The Administrator should first rely on the national rulemaking process to address the concerns of those who may seek an FDF modification. It is the Committee's intent to carefully oversee and assess the Agency's use of the authority provided in this section. The amendment specifies four criteria that must be demonstrated by the applicant to the satisfaction of the Administrator, before alternative requirements can be established.

First, to be granted relief under section 301(n), a facility must be fundamentally different with respect to at least one factor, other than cost, specified in sections 304(b), 304(g), or 307(b) and considered by the Administrator in establishing the specific national effluent limitations guidelines and standards of concern to the facility. Cost may not be a factor upon which relief may be granted. Cost was excluded as a criterion because case-by-case analysis of the cost of achieving an effluent reduction is inappropriate in a BAT national effluent limitations or preteatment standard designed to bring all facilities up to the level of control of the best discharger in the category.

The second criteria requires that applications for an FDF modification must be based solely on information and supporting data which have been submitted to the Administrator during the rulemaking process and which specifically raise the factors that are fundamentally different for the facility. This information will assure that effluent limitations guidelines and categorical pretreatment standards are as comprehensive as possible, and thereby diminish the need for applications under this subsection. This requirement also will discourage withholding of information during the rulemaking proceeding for subsequent use in an administrative proceeding seeking variance from the categorical standard.

Where the record is already closed and an applicant has new information to present bearing on the categorical standard, the applicant continues to be able to petition the Administrator to reopen the rulemaking and record and consider the creation of a subcategory. The Administrator's disposition of such a petition is subject to judicial review.

Third, this provision does not authorize the Administrator to weaken the level of controls intended by Congress, especially for toxic pollutants. For this reason, the amendment specifies that the alternative requirement imposed on the applicant can be no less stringent than justified by the applicant's fundamental difference from the rest of the category or subcategory with respect to the

statutory factors (other than cost) specified in section 304(b) or (g) of the Act.

Fourth, if relief is granted, any alternative requirement shall not result in any non-water quality environmental impact markedly more adverse than the impact considered by the Administrator in establishing the applicable national effluent limitations guidelines and standards.

The reported bill contains several additional restrictions on EPA's authority to grant modifications in order to avoid the delays in "fundamentally different factors" proceedings. An applicant for an alternative requirement must submit a complete application to the Administrator not later than 120 days after publication of the final effluent limitation guideline or categorical pretreatment standard in the Federal Register. The Administrator may not waive this deadline or extend it for submission of additional data.

If EPA amends a guideline or standard, an applicant may submit an FDF variance request within 120 days of publication of the final revision in the Federal Register. In such a case, the revision must specifically affect the discharge limitations or standards applicable to the facility and must be the limitations or standards from which the applicant is seeking relief under this subsection. Such revisions of such applicable guidelines and standards are expected to be rare so that most, if not all, applications will be submitted within 120 days after the publication of the original final guideline or standard.

Section 301(n)(2) requires the Administrator to deny any application that is not complete, without providing for an opportunity for reapplication. The applicant must submit a complete application within the 120 day period. A complete application must contain demonstrations, including all information and supporting data, satisfactory to the Administrator, regarding the applicable statutory provisions. A complete application should include, at a minimum, such items as a specific reference to the factors that are fundamentally different with supporting information; specific references to the administrative record for the rulemaking justifying the claims; a copy of or reference to the previous submission of the information and supporting data during the rulemaking and references to the administrative record for the rulemaking where these comments were considered and a discussion of why the facility is entitled to relief.

The burden for making the necessary showings is entirely upon the applicant, not EPA. However, EPA may request clarifications of the submitted information in order to allow the Administrator to make a decision on a request, but he may not extend the 120 day period. The Administrator is required to deny any application that is not complete.

This provision is included because many applicants for FDF modifications have submitted very incomplete applications and have requested a stay of all applicable effluent standards pending disposition of the application.

In the past, it has taken EPA a very long time and in some instances, years, to issue decisions on FDF modifications. According to EPA it takes an average of four to five years to issue an administrative decision on an FDF modification request. This does not in-

clude the prohibitive costs of reviewing the application or the time subsequently necessary for administrative appeals and finally, challenge in the Federal courts.

For these reasons, section 301(n)(2)(B) requires that final EPA action be taken within 240 days after submission of an application to a State or to EPA, or the application will be deemed to be denied. For the purposes of this provision, final Agency action means the administrative decision issued by EPA, following public notice and comment, as appropriate. Any administrative appeals that may ensue must be decided by the Agency within the minimum additional period necessary.

This timeframe is necessary to assure that a final decision on FDF application will not jeopardize the applicant's responsibilities to meet compliance deadlines for BAT, BCT, or categorical pretreatment standards, should the application be denied.

Pending applications on the date of enactment shall be deemed to have been submitted to the Administrator 30 days after enactment of this amendment. This provision sets in motion the Administrator's duty to act on the application within 240 days. Applications filed after enactment shall not be deemed complete unless accompanied by the required application fee.

Section 301(n)(3) provides that an application for alternative requirements under section 301(n) shall not stay the facility's obligation to comply with the effluent limitations guideline or standard which is the subject of the application. This provision is intended to prevent EPA or the State, in the case of direct dischargers, or EPA, the State or the POTW, in the case of indirect dischargers, from delaying issuance of the NPDES permit or pretreatment implementation mechanism containing the nationally applicable limitations or standards during the pendency of an application. In addition, de facto stays of applicable provisions may not be provided.

The purpose of the FDF provision is to correct past errors made by EPA in defining categories and subcategories of dischargers under section 304(b) of the Act. EPA will probably make fewer of such errors in the future, especially since the provisions in section 301(n)(1)(B) remove any incentive a facility owner or operator may have to withhold relevant information during the rulemaking phase.

The availability of FDF applications is limited to primary industrial categories identified in permit regulations issued under section 402 of the Act as of the date of enactment of the Clean Water Act Amendments of 1985. A list of primary industry categories is currently contained in the NPDES regulations (40 CFR Part 122, Appendix A). FDF applications, or approvals after the date of these changes, are limited to facilities contained in these primary industry categories. EPA has expanded this list from 34 to 37 categories, with the three new categories being a subset of the listed categories. All of these categories are intended to be included in this requirement.

Substantial Federal resources are being devoted to processing applications for modifications authorized by the Clean Water. Section 301(o) requires the Administrator to establish a system of fees to recover the cost of processing these applications. It is expected that

applications will be accompanied by an appropriate fee and will be considered incomplete until the fee is paid.

Applicants with limited financial resources may be less capable of paying these fees than are larger applicants. It is not the intention to deny access to Clean Water Act modifications to applicants with a limited ability to pay fees. The Administrator may, in appropriate discretion, develop a tiered or sliding scale fee structure so long as the aggregate amount of fees collected reflects the Federal resources actually expended in processing such applications.

Though the fees collected under this requirement will be deposited in the miscellaneous receipts of the Treasury, the EPA budget should provide resources for processing modification applications that reflect the fees received by the Treasury.

The Administrator may not use the authority of this section to modify effluent standards or prohibitions issued pursuant to section 307(a)(2) of this Act, the general prohibited discharge standards in 40 C.F.R. § 403.5 (or other requirements implementing such standards), or effluent limitations guidelines or pretreatment standards applicable to facilities other than the primary industrial categories identified in the permit regulations issued under section 402 of the Act and in effect on the date of enactment of this amendment.

The FDF provision is intended to be available for modification of requirements for conventional, nonconventional, and toxic pollutants. Consistent with this objective, section 301(1) of the Act, which excludes toxic pollutants from variances or modifications under the Act, is amended to allow FDF modifications for toxic pollutants. This amendment to section 301(1) does not in any way weaken the application of the subsection to modification provisions of the Act other than the FDF provision (section 301(n)).

The Administrator may not delegate the authority provided by this subsection to any State, though the Administrator should obtain the concurrence of a State with an approved NPDES or pretreatment program before approving any alternative requirement under this subsection.

The owner or operator of a facility has the burden of proving to the satisfaction of the Administrator that the facility is eligible for an alternative requirement under this subsection. The Administrator's decision to promulgate or deny an alternative effluent limitation guideline or categorical pretreatment standard under this subsection shall be subject to judicial review pursuant to section 509(b)(1) of the Act.

All of these provisions are to be self implementing, and effective upon the date of enactment of the Clean Water Act Amendments of 1985. The Administrator is encouraged to amend the appropriate regulatory provisions to make them consistent with these requirements; however, the failure of the Administrator to make such revisions will not affect the implementation of these provisions.

WATER QUALITY-BASED EFFLUENT LIMITATIONS AFTER BAT

The reported bill modifies sections 302, 303, 304, and 305 of the Act, to provide for the development of water quality based effluent

limitations after the implementation of best available technology (BAT).

States are required to undertake a progressive program of toxic pollutant load reduction where BAT is not sufficient to meet State water quality standards and support public health and water quality objectives of the Act. The following scheduled requirements are included in this provision:

(1) Under new section 305(c), within two years of enactment of the Clean Water Act Amendments of 1985, States must identify those water bodies within or adjacent to them which will not meet State water quality standards because of toxic pollutants after the implementation of BAT.

(2) Under new section 303(c)(2)(B), whenever a State reviews or revises existing water quality standards or adopts new standards, it must adopt numerical criteria for those toxic pollutants which could reasonably be expected to interfere with designated water uses and set such criteria at the levels necessary to support such uses. States shall establish specific numerical criteria based on the Environmental Protection Agency's existing national water quality criteria and other sources. A State may also utilize toxic pollutant criteria based on biomonitoring techniques or assessment methods to supplement numerical criteria. While numerical criteria are immediately required for toxic pollutants which are highly persistent, bioaccumulative, or known or suspected carcinogens, mutagens, or teratogens, for other toxic pollutants biomonitoring can be used until numerical criteria can be developed.

(3) Under new section 304(a)(8), the Administrator, in consultation with appropriate State agencies, is to provide information within two years of enactment of the Clean Water Act Amendments of 1985, on methods of establishing criteria with biomonitoring assessment techniques.

(4) Under new section 303(d)(4), not later than two years after the identification of water bodies with toxic pollutant water quality standard problems, States must establish effluent limitations for individual dischargers into such water bodies, based on established toxic pollutant criteria and adequate to attain water quality standards. These effluent limitations must be incorporated into permits which must be complied with no later than three years after the establishment of the effluent limitation.

Section 302(a) of the Act, as amended by the reported bill, provides for effluent limitations to be established whenever, in the judgment of the Administrator, a water body will not attain or maintain the level of water quality which will assure protection of public health, public water supplies, agricultural and industrial uses, and the protection and propagation of a balanced population of shellfish, fish and wildlife, and allow recreational activities in and on the water, even after the application of all the technology-based requirements of the Act, or whenever such a water body has been identified under new section 305(c)(1)(B). For such water bodies, the Administrator must establish effluent limitations for any point sources interfering with attainment or maintenance of that level of water quality providing a degree of control which can reasonably be expected to contribute to attaining or maintaining the required water quality.

Ordinarily, State water quality standards established or revised under section 303 designate the uses specified in section 101(a)(2) of the Act, and if implemented through adequate criteria, waste load allocations, and effluent limitations in permits, will protect the level of water quality addressed by section 302(a). The Administrator is to use the authority of section 302(a), however, where compliance with best available technology requirements or the State water quality standards process are not attaining this level of water quality, due to point sources.

Under section 302(b), as amended, the Administrator is permitted, with the concurrence of the State, to modify effluent limitations for non-toxic pollutants established by the Administrator under section 302(a) if the applicant demonstrates at the time the effluent limitation is proposed that there is no reasonable relationship between the economic and social costs and the benefits to be obtained from achieving the proposed limitation.

The Administrator, with the concurrence of the State, may also modify effluent limitations established under section 302(a) for discharges of toxic pollutants, for single period not to exceed five years, if the applicant demonstrates at the time the effluent limitation is proposed that the modified requirement represents the maximum degree of control within the economic capability of the owner of the particular source, and will result in reasonable further progress (beyond BAT) toward attaining the level of water quality specified in section 302(a). The provisions of new section 302(b)(2) apply only to effluent limitations established by the Administrator under section 302(a).

Section 303 of the Act is the primary mechanism for the development of State water quality standards and effluent limitations based on them. In developing standards under that section, States are authorized to consider the economics of achieving such standards only as allowed under EPA's regulations established pursuant to section 303. Section 302 is not intended to undercut or in any way affect the development of water quality standards under section 303 nor the imposition of section 301(b)(1)(C) of the Act. Rather, it is a supplemental provision which directs the Administrator, now with the concurrence of the State, to impose effluent limitations which assure the attainment or maintenance of water quality for the protection of public health, public water supplies, agricultural and industrial uses, and the protection and propagation of a balanced population of shellfish, fish, and wildlife, and recreational activities in and on the water, in situations where the adopted water quality standards do not assure the attainment and maintenance of such uses, including in some instances those waters which are to be listed under new section 305(c). The provisions of section 302(b)(2) authorizing the modification of effluent limitations apply only to the effluent limitations established under section 302(a).

New section 304(1) requires the Administrator to publish within 12 months a plan (1) establishing a schedule for the annual review and revision of effluent guidelines already promulgated; (2) identifying categories of sources of toxic or nonconventional pollutants for which guidelines have not yet been promulgated; and (3) establishing a schedule for promulgation of those guidelines, no later

than 3 years after identification of the categories. Guidelines are required for any category of sources discharging significant amounts of toxic pollutants. In this use, "significant amounts" does not require the Administrator to make any determination of environmental harm; any non-trivial discharges from sources in a category must lead to effluent guidelines. This requirement does not affect the Agency's obligations to publish effluent guidelines under the toxic pollutant Consent Decree.

INDIRECT DISCHARGE OF CONVENTIONAL POLLUTANTS

In cases where a publicly owned municipal treatment works is not able to meet the requirements of its permit because of operational, mechanical, or design failures, the Administrator should not require pretreatment of conventional pollutants by indirect discharges to allow the treatment works to meet the conditions of their permits. The Committee recognizes that in such circumstances the burden of correction of the problem may more appropriately lie with the publicly owned treatment works itself through adjustment of its facilities or operation. This provision does not modify or limit the Administrator's authority and obligation to promulgate pretreatment standards which regulate pollutants which interfere with a publicly owned treatment works. It does not affect a discharger's obligation to comply with Federal, State, and local pretreatment requirements. The Administrator's enforcement authorities against indirect dischargers or municipalities under the Act are not limited by this provision. Nor does it restrict a POTW from imposing any treatment conditions it chooses on its contributors.

CIVIL AND CRIMINAL PENALTIES

This section amends sections 309 and 404 of the Clean Water Act relating to civil and criminal penalties.

Civil penalties

Sections 309 and 404 of the Act are amended to increase the civil judicial penalty limit from $10,000 to $25,000 per violation, to clarify that each distinct violation is subject to a separate daily penalty assessment of up to $25,000, and to clarify that violations of pretreatment program requirements are subject to civil penalties.

The increase in the maximum daily penalty would make the Clean Water Act consistent with penalty limits under other environmental statutes and reflects the serious nature of these violations. The amendment would also expressly require the courts to consider a number of factors, including, in particular, the economic benefit gained as a result of the violation. Violators should not be able to obtain an economic advantage vis-a-vis their competitors due to their noncompliance with environmental laws. The determination of economic benefit or other factors will not require an elaborate or burdensome evidentiary showing. Reasonable approximations of economic benefit will suffice. Other objective factors customarily taken into account in assessing penalties, such as the history of violations, good faith efforts to comply and economic

impact on the violator, also may be taken into account in arriving at an appropriate penalty.

Administrative civil penalties

The Clean Water Act currently provides the Administrator with two civil enforcement options. When faced with a violation of the Act, the Administrator may issue an order requiring compliance or the Administrator may bring a civil action in the appropriate U.S. district court for penalties and injunctive relief.

These amendments give the Administrator a third option: to assess administrative civil penalties of up to $10,000 per day for each violation of a Clean Water Act requirement. Thus, a discharger who violated three daily maximum permit limits on a day could be subject to a maximum penalty of $30,000 for that day's violations. The total maximum administrative penalty that may be assessed under this provision is $125,000 for an individual enforcement action.

This authority to issue administrative penalty orders is intended to complement and not to replace a vigorous civil judicial enforcement program. Civil judicial enforcement is a keystone of successful enforcement of the Act and necessary for cases involving novel issues of law or contested penalty assessments, cases requiring injunctive relief, serious violations of the Act, or large penalty actions, and cases where remedies are sought requiring significant construction or capital investment. The addition of this enforcement tool is based in part on the Agency's assurance that it does not intend to retreat from vigorous judicial enforcement of Clean Water Act violations.

The addition of administrative civil penalties should, therefore, increase the total number of enforcement actions without any corresponding decline in the number of judicial enforcement actions taken by the Administrator. The Administrator is not expected to use this new authority for cases that would otherwise have been tried in court. Three provisions, in particular, reflect the Committee's intent on this score. First, this new authority is designed to address past, rather than continuing, violations of the Act. Continuing violations are more appropriately addressed by abatement orders or injunctive actions and, if EPA seeks both civil penalties and injunctive relief, one judicial action should be filed. Second, this new authority includes a cap on penalty amounts and a lower daily limit than judicial penalties. These limitations are intended to assure that violations of greater magnitude are handled judicially and pursued in a judicial forum. Third, this new authority to administratively assess civil penalties sunsets after five years. This will provide ample time to review the experience with administrative civil penalties before further administrative penalties are assessed. Such review will be designed to assure that administrative civil penalties have not become a substitute for judicial action, that such penalties are no less stringent than those which would be assessed in court for the same violations, and that such penalties are both promptly assessed and promptly paid.

Administrative penalties could provide greater deterrent value than an administrative order for a violation that does not warrant the more resource intensive aspects of judicial enforcement. Many

Clean Water Act violations are straightforward, self-reported and likely uncontested by the violator. The administrative penalty authority is expected to be exercised where violations are clearly documented and easily corrected and will likely be uncontested by the violator.

To serve its intended function, this administrative enforcement tool should be tailored to the less complex cases for which it is intended. Administrative enforcement should be as flexible and unencumbered by procedural complexities as possible, consistent with due process considerations while providing for effective input by citizens who may be affected by the violations. Administrative cases should be resolved promptly.

The procedures adopted in the reported bill strike the appropriate balance between streamlined procedures and basic fairness. Prior to issuing an administrative order assessing a civil penalty, the Administrator must give the person against whom the penalty is to be assessed written notice of the proposed penalty and an opportunity to request, within 30 days of receipt of such notice, a hearing. Such a hearing includes the right to a reasonable opportunity to be heard and to present evidence. Because administrative penalty assessments will be used in smaller cases and often will be based on discharge monitoring reports routinely submitted by permittees, formal administrative procedures strictly in accordance with the formal adjudicatory procedures of the Administrative Procedures Act are not required. EPA therefore has the flexibility to streamline its decisionmaking process and procedural rules through promulgation of procedural regulations that provide appropriate due process protection.

There are several safeguards in this provision to prevent abuse of the administrative penalty authority, such as significant violators escaping with nominal penalties. The Administrator is required to provide the public with notice of the proposed penalty assessment and a reasonable opportunity to comment on the proposal. Public notice of such proceedings must be given in a manner that will apprise interested citizens of the proceeding. If a hearing on the proposed assessment is conducted, any citizen who commented on the proposal shall be given notice of such a hearing and a reasonable opportunity to be heard and to present evidence at the hearing. If no hearing is held, the Administrator must set aside the penalty order and provide a hearing when presented with evidence that the order was inadequate or improper. The Administrator shall construe this provision liberally so as not to place a heavy burden on citizens seeking a hearing.

An order assessing a penalty becomes final and nonappealable 30 days after its issuance or, in the case of a post-assessment request for a hearing, 30 days following the final action by the Administrator. While the Committee bill allows for judicial review without the necessity of holding a hearing in every case, it is expected that some parties will request hearings. If no hearing is requested by a private party, or held by the Agency sua sponte, the record for review will include the proposed assessment, supporting factual documentation and comments filed during the comment period. If a hearing is held, however, it is expected that evidence to dispute the

proposed assessment will be introduced at the hearing and will become part of the administrative record.

The potential for overlap between citizen enforcement suits and administrative civil penalties is specifically addressed. Citizen suits are a proven enforcement tool. They operate as Congress intended—to both spur and supplement to government enforcement actions. They have deterred violators and achieved significant compliance gains. In the past two years, the number of citizen suits to enforce NPDES permits has surged so that such suits now constitute a substantial portion of all enforcement actions filed in Federal court under this Act.

This amendment therefore strikes a balance between two competing concerns: The need to avoid placing obstacles in the path of such citizen suits and the desire to avoid subjecting violators of the law to dual enforcement actions or penalties for the same violation. It states that no one may bring an action to recover civil penalties under sections 309 (b) and (d), 311(b), or 505 of this Act for any violation with respect to which the Administrator has commenced and is diligently prosecuting an administrative civil penalty action, or for which the Administrator has issued a final order not subject to further judicial review (and for which the violator has paid the penalty). This limitation applies only to an action for civil penalties for the same violations which are the subject of the administrative civil penalties proceeding. It would not apply to an action for civil penalties for a violation of the same requirement of the Act that is not being addressed administratively or for a past violation of another pollutant parameter (even one resulting from the same discharge which is the subject of the administrative civil penalty proceeding). In addition, this limitation would not apply to: 1) an action seeking relief other than civil penalties (e.g., an injunction or declaratory judgment); 2) an action under section 505(a)(1) of this Act filed prior to commencement of an administrative civil penalty proceeding for the same violation; or 3) a violation which has been the subject of a notice of violation under section 505(b)(1) of this Act prior to initiation of the administrative penalty process, provided that, in the latter case, an action under section 505(a)(1) of this Act is filed within 120 days of the notice of violation.

The Agency can prevent duplicate proceedings by intervening in the ongoing citizen enforcement suit or by bringing its own judicial action before a citizen suit is filed. This amendment does not preclude administrative or judicial enforcement actions by the Administrator for any violations not specifically penalized by the initial enforcement action.

Judicial review of a penalty assessment is available to any person against whom a civil penalty order is issued as well as to any citizen who commented on a proposed assessment. Providing citizens with a right to appeal will serve as an added safeguard to assure that the Agency assesses appropriate penalties for violations of the Act that take into account the seriousness of the violation, as well as other factors enumerated in the bill, and serve to deter noncompliance. Judicial review is not to be de novo review, but will be based upon whether the Agency's findings of a violation is supported by substantial evidence in the administrative record and whether the assessment of the penalty is an abuse of discretion.

Where it is clear that the Agency has assessed such an unreasonably low penalty as to constitute an abuse of discretion, the court may choose to impose its own higher penalty rather than exercise its authority to remand. District courts are free to remand cases in appropriate circumstances.

The penalty collection proceeding will not be an opportunity to contest the penalty assessment. The discretion to compromise, mitigate or abandon such claims continues to reside with the Attorney General.

Criminal penalties

Knowing violations of the Act have caused serious environmental harm and millions of dollars of damage to private and public property. In some cases, they have raised the clear potential for loss of life and serious personal injury. A stronger criminal sanction is needed under the Clean Water Act to deter these violations.

These amendments would elevate penalties for knowing sanctions to the Clean Water Act for persons who knowingly or negligently introduce into a sewer system or a POTW, a pollutant or hazardous substances which such person knew or reasonably should have known could cause personal injury or property damage. Criminal liability shall also attach to any person who is not in compliance with all applicable Federal, State and local requirements and permits and causes a POTW to violate any effluent limitation or condition in any permit issued to the treatment works under section 402 of the Act.

The felony level penalties for knowing violations (not less than $5,000 nor more than $50,000 per day violation and imprisonment for up to three years) are more closely comparable to the levels provided by the 1984 amendments to the Solid Waste Disposal Act RCRA and reflect the commensurately serious nature of the violations to be criminally prosecuted under the Clean Water Act. Currently, a knowing discharge onto the ground of hazardous wastes could subject discharger to felony sanctions under RCRA. However, the same discharge into a sewer system or a POTW might subject the discharger to the lesser misdemeanor provisions of the Clean Water Act. The result is an unintentional incentive to dump hazardous substances into sewer systems or POTWs. The addition of these criminal sanctions will aid in protecting these sewer systems and POTWs. Substantial Federal monies are invested in many of these POTWs. Existing misdemeanor penalties are retained to address those negligent violations which merit lesser punishment.

This section also adds to section 309(c) enhanced felony penalties for certain life-threatening conduct. The concept of a knowing endangerment crime is found, as well, in section 3008(e) of RCRA. This new offense under the Clean Water Act is based upon violation of certain predicates in the Act. In the event of such knowing violation, the amendment subjects to greater punishment one who knows that he thereby placed another person in imminent danger of death or serious bodily injury. The criminal penalties that apply upon conviction (up to 15 years imprisonment plus fine of up to $250,000 for individuals, a fine of up to $1,000,000 for organizations) are equivalent to the RCRA knowing endangerment provision, as recently amended.

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The reason for this addition is that the mishandling of dangerous materials in ways within the purview of this Act can pose substantial danger to public health and safety, just as in situations regulated by RCRA. Therefore, knowing endangerments through water related violations of Federal law should be discouraged as strongly as possible and should be subject to extraordinary sanctions when they occur.

The differences between the knowing endangerment concept here and its earlier formulation in RCRA reflect intervening prosecutorial experience. For example, this provision does not have the unique state of mind definition found in the "Special Rule" in section 3008(f)(1) of RCRA, because the unusual nature of that subsection has discouraged prosecutions under section 3008(e). It is more appropriate that the "knowing" element of a violation be measured against the standard established by prevailing case law, as it is for any other Federal crime sharing the same state of mind element. Also, there is no subsection corresponding to the "Special Rule" in RCRA section 3008(f)(4) regarding defenses. That provision is an unnecessary restatement of existing criminal law and only raises a potential for misunderstanding and invites unnecessary litigation.

The maximum term of imprisonment contained in the provision of the current law penalizing the knowing making of false statements, representations and certification, or tampering with monitoring equipment required under the Act, is increased from six months (a petty offense) to two years (a felony). The provision doubling the maximum punishment with respect to both fine and imprisonment for second and subsequent convictions under the same pararaph of the Act is extended to this provision as well as to the knowing endangerment provision.

This amendment also extends and consolidates criminal sanctions involving violations of the provisons of section 405 governing disposal of sewage sludge, violations of requirements imposed in State pretreatment programs approved under section 402(b)(8), violations of section 318 permits, and violations of section 404 permits issued by the Secretary of the Army or by a State.

Strong public support exists for aggressive enforcement action in cases of environmenal misconduct. The addition and strenthening of criminal sanctions in the Act for knowing violations of the law will reflect this public concern and should dispel any perceptions that a knowing violation of the Act is not a serious offense.

PARTIAL NPDES PROGRAM APPROVAL

This section amends section 402 of the Clean Water Act to permit the Administrator of the Environmental Protection Agency to delegate a portion of the National Pollutant Discharge Eliminatin System program to a State under conditions.

A State would have two options. Under either option, the Governor must submit a plan to the EPA for approval. Such a plan must either show that the State is prepared to administer program components representing a significant part of the State program, and be prepared to make all reasonable efforts to assume administration of the toal program within the ensuing five years, or the plan must provide for administration of a permit program for all of one

or more discharge categories. Under this section option, the plan must cover all catetories of discharges and represent a complete permit program for all categories of discharge under the jurisdiction of the State.

In the event that a State wishes to return NPDES program administration authority to the Federal Government, or in the event the Administrator withdraws approval of a state-operated program, the entire program must be returned to the Federal Government.

Current law with respect to the assumption of NPDES program authority by States has been interpreted to require the immediate assumption of the entire NPDES program as it is administered by EPA. Consequently, States with permitting responsibilities divided among more than one agency or with resource difficulties, either of which limits the State from assuming the entire program, have been precluded from assuming the NPDES program.

For example, the State of Texas divides wastewater permits between the Texas Department of Water Resources and the Texas Railroad Commission. While the Texas Department of Water Resources, which does the vast majority of permitting, has sought NPDES assumption, the Texas Railroad Commission, which is responsible for oil and gas exploration and production permitting, has only recenly begun seeking assumption. Current law has thus prevented the Texas Department of Water Resources from obtaining assumption of its portion of the program.

States should be tested against their ability to operate an effective permit program and should be encouraged to assume NPDES permitting authority. The bill includes modifications to enhance the opportunities for States to develop NPDES programs and assume this responsibility.

JUDICIAL REVIEW AND AWARD OF FEES

This section revises the provisions of section 509 of the Clean Water Act governing judicial review of certain actions of the Administrator of EPA and provides for the awarding of costs of litigation in actions brought pursuant to section 505 or 509 to prevailing or substantially prevailing parties.

The purpose of the changes in section 509(b)(1) is to clarify the proper venue for court of appeals review of certain actions of the Administrator under the Clean Water Act and to extend the period within which an application for review of such actions must be filed from ninety to one hundred and twenty days.

Section 110(a)(1) provides that proper venue for judicial review under section 509 of the Act shall be in the Circuit Court of Appeals of the United States for the Federal judicial district in which the applicant resides or transacts business which is directly affected by the action in question.

Currently section 509(b)(1) provides for venue in the Circuit Court of Appeals of the United States for the Federal judicial district in which the applicant "resides or transacts such business". This phrase is inherently ambiguous because the word "such" has no antecedent. The legislative history of this phase is also ambiguous and is not consistent with the plausible interpretation, urged

by the Department of Justice, that the words "such business" refer to business which is directly affected by the action which is the subject of the application for review. The two courts of appeals which sought to construe this phrase, the Fifth Circuit in *Tenneco Oil Co.* v. *EPA*, 592 F. 2d 897 (1979), and the Eighth Circuit in *Peabody Coal Co.* v. *EPA*, 522 F. 2d 1152 (1975), ultimately avoided ruling on its meaning and proper venue for section 509(b) cases remains unsettled. In order to eliminate, or at least reduce, the potential for threshold litigation over proper venue, the Committee amendment changes the venue provision so that the language conforms to the reading of current law which has been suggested by the Department of Justice, The intention of the Committee is to allow the filing of an application for review in the circuit in which the applicant resides, i.e., has his principal place of business, or where he transacts business which is directly affected by the action of which he complains. For example, in a case in which the action complained of is a denial of a permit for a proposed facility, the direct effect of the action would be felt only at the location of the proposed facility, even though indirect effects of the action might be felt at other facilities of the company.

Section 110(a)(2) changes from ninety to one hundred and twenty days the period within which an application under section 509 of the Act for judicial review of an action must be made.

The purpose of this change is to assure that persons who will be significantly affected by an action of the Administrator will have ample opportunity to assess the consequences of such action and if necessary file an application for review prior to the expiration of the time period. The Committee has previously considered this issue in a different but similar context (Senate Report No. 97-666 at pp. 94-5) and has concluded that one hundred and twenty days is a reasonable period within which to require the filing of an application for review.

Section 10(b) establishes a random selection procedure, to be administered by the Administrative Office of the United States Courts, to determine in an orderly fashion the court of appeals in which an agency action is to be reviewed when applications for review have been filed in two or more courts of appeals. Following the selection of a court of appeals, other courts in which applications have been filed are directed to promptly transfer such applications to the court in which the agency record has been filed. Notwithstanding the outcome of the random selection procedure, any court in which an application has been filed would retain the power to transfer the application to any other court of appeals for the convenience of the parties or otherwise in the interest of justice. The court of appeals would also be given the power to award costs of litigation to a prevailing or substantially prevailing party when such an award is appropriate.

Section 10(c) limits the award of costs of litigation in citizen's suits under section 505(d) of the Act to prevailing or substantially prevailing parties.

The purpose of the random selection procedure is to eliminate the "race to the courthouse" phenomenon and provide for an orderly means of consolidating applications for review of the same agency action. The Committee wishes to emphasize that this proc-

ess is not intended to preclude any court of appeals from exercising its inherent power to transfer an application for review to any other court of appeals for the convenience of the parties or otherwise in the interest of justice.

Section 509(b)(3)(B), as amended, provides new authority for any court of appeals to grant a temporary stay of the effective date of a final agency action pending selection of the court of appeals in which the action will be reviewed. However, it is not the intention of the Committee that stays should be granted unless the same requirements that ordinarily apply to an application for a stay of an agency action are fully satisfied.

The purpose of the new section 509(b)(4) and the amendment to section 505(d) is to clarify the circumstances under which costs of litigation may be awarded. In *Sierra Club* v. *Gorsuch*, 672 F. 2d 33 (D.C. Cir 1983), *rev'd sub nom., Ruckelshaus* v. *Sierra Club*, 51 U.S. L.W. 5132 (July 1, 1983), the court of appeals held that it was "appropriate" to award attorney's fees under the Clean Air Act to the petitioner even though the government prevailed on all issues. The Committee does not believe that it is reasonable or appropriate to compel either the government or a private party to pay the costs of an opposing party to a lawsuit when the opposing party has not prevailed on the issues. Accordingly, these amendments would limit the awarding of costs under the Clean Water Act to prevailing or substantially prevailing parties.

These amendments are not intended to preclude the awarding of costs to a partially prevailing party with respect to the issues on which that party has prevailed, if such an award is deemed appropriate by the court. Nor does the Committee intend to authorize an award of costs to a party who intervenes in a case and, although technically on the prevailing side, fails to make a substantial contribution to the successful outcome of the case.

In addition, the Committee recognizes that a party may "prevail" by achieving a successful settlement.

NONPOINT SOURCE POLLUTION

This section establishes a new section 319 in the Clean Water Act to require development of implementation programs to control nonpoint source pollution. Except for two elements, this section is identical to the legislation reported by the Committee in the 98th Congress.

First, it requires a State, in identifying the best management practices which will be undertaken to reduce nonpoint source pollution, to take into account the impact of the proposed practice on groundwater quality. Second, it allows funds reserved under section 319(d)(2)(B) to be used for assessment of the relationship between nonpoint source pollution and groundwater contamination. These provisions reflect the Committee's recognition of the importance of groundwater resources.

Section 319(a)(1) requires each State, individually or in combination with adjoining States, to submit a proposed nonpoint source pollution management program to the Administrator of the Environmental Protection Agency within 18 months of enactment of this legislation. Such a program must:

(A) identify waters which are not expected to attain applicable water quality standards or Clean Water Act goals without control of nonpoint sources;

(B) designate categories, subcategories, or particular nonpoint sources that contribute significant nonpoint pollution to those waters;

(C) identify best management practices (BMPs) which will be undertaken to reduce pollution in each category or subcategory taking into account the impact of the proposed practice on groundwater quality.

(D) identify programs to be used to achieve implementation of identified BMPs, by the designated nonpoint sources, including nonregulatory or regulatory programs for enforcement, technical and financial assistance, education, training, technology transfer, and demonstration projects;

(E) include a schedule containing annual milestones for utilization of the programs identified in (D) and implementation of the BMPs identified in (C) at the earliest practicable date;

(F) assure that existing State laws are adequate to carry out the proposed program, or contain a stated intent to seek additional needed authority together with a proposed schedule; and

(G) identify Federal financial assistance programs and Federal development projects to be reviewed by the State for their consistency with its proposed program.

The provision that adjoining States may develop proposed programs together is intended to promote cooperative actions among States to deal with water quality problems in downstream States when those problems are, in part, a result of nonpoint source loadings in upstream States. Downstream water quality problems may result from transboundary delivery of pollutants that are not sufficient to cause identification of the waterbody by the upstream State, but which nonetheless contribute substantially to water quality problems in the downstream State. Until those upstream sources of nonpoint pollution are brought into the program, the nonpoint source pollution problem in the downstream State may not be adequately addressed, as no measure of control applied in the downstream State will affect the pollution in the upstream State. In such cases, the upstream State may have little incentive to incur program costs that will result in water quality benefits primarily to the downstream State. The Administrator is given the authority to provide extra funding for such interstate cooperative efforts in section 319(d)(2)(B). A joint or cooperative management program may also be appropriate when the affected water body is shared by more than one State, e.g., an estuary lying in two or more States or a lake or river that forms the boundary between two States.

Subsection (a)(1)(A) requires each State to identify those particular waters within its boundaries which, after implementation of point source controls, will not attain or maintain water quality standards or the goals and requirements in the Act without controlling nonpoint sources of pollution. The State need not demonstrate that the nonpoint sources of pollution are the sole cause for the water quality standards not being attained or maintained. The fact that the standards are not likely to be attained or maintained

under existing conditions in the reasonably near future, and that there are loadings of pollutants from nonpoint sources of pollution that can reasonably be expected to be contributing to the water quality problems, should suffice for a State to identify such waters under subsection 319(a)(1)(A). In identifying such waters, the State should not focus only on the immediately adjacent waters to nonpoint sources, but also consider downstream segments, lakes, and other water bodies where such pollutants may accumulate and cause water degradation.

The reference both to water quality standards and to the goals and requirements of the Clean Water Act arises from the fact that not all water quality standards yet reflect the Act's goals and requirements. In such cases, identification and control of nonpoint sources can contribute to improvement in water quality and upgrading or water quality standards.

In section (a)(1)(B), the term "significant" is inserted to exclude trivial sources of pollutants or sources of pollutants which are not related to the water quality problems identified in subparagraph (A). The term "categories" in this subsection could include sources such as cropland, rangeland, pastureland, forestland, construction sites, industrial sites, mines, residential areas, streets, roads, highways, other developed land, and wild areas. Within each of these categories, subcategories can be defined on the basis of characteristics such as geographical location, type of activity, size of facility, topography, and other factors. The State has broad discretion to establish categories and subcategories that make sense in terms of the types of nonpoint source pollution problems and the type program that the State will implement to control them. However, the categorization must be sufficiently comprehensive to include all significant sources.

"Particular nonpoint sources" could be identified when they, in and of themselves, are significant contributors of pollutants, or in some way are sufficiently unique that they cannot reasonably be included in one of the categories or subcategories.

The term "best management practices" in subsection (a)(1)(C) is left undefined in the bill because of a concern that any definition would limit the States' flexibility and perhaps undercut existing programs in which best management practices (BMP's) already are being implemented. The term encompasses a broad array of management practices that can be undertaken, alone or in combination, to reduce nonpoint sources of pollution. For example, in soil conservation programs over forty BMP's have been identified, including conservation tillage, grassed waterways, cover crops, undisturbed field perimeters near waterways, and terracing. The selection of the appropriate BMP's in a particular instance would depend upon soil type, topography, desired crop, costs of implementation, and other factors. Simple and cost-free changes in agricultural practices, such as careful scheduling and application of fertilizer and pesticides, may reduce runoff of these pollutants, thereby resulting in cost savings to the farmer.

Best management practices have also been identified for reducing runoff from urban areas (e.g., storm water containment structures), construction areas (e.g., erosion barriers such as straw bales and dikes), silviculture areas (e.g., careful road placement, culvert-

ing, grassing of abandoned roads and skid trails), and grazing lands (e.g., herd and vegetation management).

States are required to consider the impact of management practices on groundwater quality. Because of the intimate hydrologic relationship that often exists between surface and groundwater, it is possible that measures taken to reduce runoff of surface water containing contaminants may increase transport of these contaminants to groundwater. The State should be aware of this possibility, when defining best management practices, especially in aquifer recharge areas.

Subsection (a)(1)(D) allows a State for flexibility to construct a management program containing regulatory or nonregulatory components, or a mixture of the two. The list of possible program elements is not intended to be exclusive. It is expected that States will differ in the program strategies they adopt. However, a State program must have a clear purpose: to achieve implementation of BMP's by the identified sources. The State is expected to show how its management program will provide reasonable assurance that appropriate control measures will actually be adopted by the sources identified in subsection (a)(1)(B). Further, the State is required to commit itself to a schedule containing milestones for implementation of BMP's by sources. This is a requirement that the State take responsibility for the effectiveness of its program in terms of getting BMP's implemented by sources, as distinct from merely committing to carry out its identified program activities. The Administrator, in awarding subsequent program grants pursuant to subsection (d), must consider the State's record in meeting these commitments and determine that the State is satisfactorily implementing its program.

Milestones for both program implementation and BMP implementation by sources must be established to provide for implementation at the earliest practicable date. This requirement reflects the importance of the nonpoint source pollution problem and is intended to demonstrate congressional intent that BMP's be implemented expeditiously. Consistent with this general requirement, States may establish different milestones for different categories of sources. No single date or statutory schedule is included in order to allow the State to take account of variations in the number and types of sources and pollutants and differing degrees of difficulty in achieving pollutant reductions. Similarly, different States may commit to different schedules based on characteristics of the State program.

In subsection (a)(1)(F), the term "as expeditiously as practicable" takes into account the current laws of the State or local governments and the schedule for meetings of the legislature, but indicates that, taking account of these factors, the needed authorities will be adopted as quickly as they can.

The bill also vests authority with the States in subsection (a)(1)(G) to identify Federal financial assistance programs and Federal development projects for which the State will review individual assistance applications and development projects for their effects on water quality to determine if they are consistent with the State's nonpoint source pollution management program.

This subsection is based on the current provisions in Executive Order 12372. This Executive Order, issued by President Reagan, establishes procedures by which State authorities may comment upon applications for Federal assistance and Federal development projects to assure that the federally supported activities and projects are consistent with State needs and objectives. This bill assures that the provisions of the Executive Order, as in effect on September 17, 1983, will be applicable to the State's implementation of this review process, with respect to its nonpoint source management program, regardless of any subsequent revisions of the Executive Order. The bill also allows States to designate any Federal assistance program or development project listed in the most recent Catalog of Federal Domestic Assistance, rather than just those programs and projects subject to the current Executive Order 12372. The purpose of this provision is to allow the State's review to include any Federal program or project that the State determines needs to be reviewed for consistency with its nonpoint management program. This subsection, in conjunction with subsection (f)(1), builds upon established procedures for State review of Federal Activities. These subsections provide the States with an important tool to assure that proposed Federal assistance and development projects are implemented in a manner which the State deems consistent with its nonpoint source pollution management program.

Subsection (a)(2) gives the States authority to use information developed under other pertinent sections of the Clean Water Act in the development of their programs, particularly the section 208(b) waste treatment management plans, if the State determines those plans to be consistent with the goals and objectives of this new section. Subsection (a)(3) gives the States authority to make use of local agencies or organizations in the development and implementation of their programs. This would include agencies receiving funding under section 205(j) and soil conservation districts.

In many cases, information and institutional relationships developed under section 208 planning process will be relevant to, and consistent with, the requirements and objectives of this bill. Many States used the section 208 planning process to gather needed data about nonpoint source pollution and to promote local and regional cooperative pollution control efforts. In such cases, the State is encouraged to build upon these program elements in constructing the program required by this bill. However, the bill does not require the use of section 208 plans or local agencies and organizations because some State programs have evolved well beyond the section 208 planning effort, and also because some States gave inadequate or inappropriate attention to nonpoint sources in their 208 plans. In any case, the State has the flexibility to select the program elements that will most effectively fulfill the requirements and objectives of this bill.

Subsection (b) describes the responsibilities of the Administrator of the Environmental Protection Agency subsequent to the submission of a State's proposed management program. The Administrator is given a maximum of six months after receipt of a State program in which to determine its compliance with the requirement of subsection (a)(1). If he determines that it does not comply, he must

notify the State of any modifications necessary to obtain approval. The State is then given three additional months to submit a revised program, to be approved or disapproved by the Administrator within three months of receipt.

If the Administrator determines that a State management program meets the requirements in subsection (a)(1), he must approve the program. If he fails either to approve or request modification of a submitted State program within six months of receipt, the program is deemed to be approved. Likewise, if the Administrator fails to approve or disapprove a program revised at his request within three months of receipt, such a revised program is deemed to be approved. This provision is intended to assure that implementation of programs to control nonpoint sources of pollution are not delayed because of inaction on the part of the Administrator.

In determining whether the proposed program meets the requirements and objectives of subsection (a)(1), the Administrator should take into account any public comments he has received, including those of downstream States that may be affected by the program. The bill does not provide precise criteria for program approval because it is expected that programs may vary from State to State. However, the Administrator's review should involve considerably more than a checklist of required program elements. The Administrator must review submitted programs in light of the objective of the bill, which is to achieve reduction of nonpoint source pollutant loadings by the implementation of best management practices by sources and to do so at the earliest practicable date. Before approving the program and awarding Federal grants to support its implementation, he should be persuaded that the program is capable of meeting this objective.

Subsection (c) pertains to States which fail to submit a nonpoint source management program consistent with subsection 319(a)(1). After the Administrator notifies such State, he must carry out the requirements of section 319(a)(1) (A) and (B) on behalf of that State. The Administrator is thus required to identify waters within the noncomplying State exhibiting nonpoint pollution problems and designate categories or subcategories of significant contributors to that pollution. Any actions of the Administrator pursuant to this subsection shall be reported to Congress.

The purpose of this provision is to make Congress aware of the extent of nonpoint source pollution problems that are not being addressed because of failure to comply with the requirement of this section that States implement a nonpoint source pollution management program. Thus, there will be available to Congress, in a timely fashion, information on the causes and problems of nonpoint source pollution on a nationwide scale for noncomplying States, as well as complying States. Such information will be needed for future decisions on nonpoint source pollution control.

Subsection (d) authorizes Federal grants to States to assist them in implementing approved management programs and authorizes funds to be appropriated to the Environmental Protection Agency for the administration of this new section. The Federal grants are not to exceed 75 per centum of the costs of implementing the State management program. Non-Federal funds must be equal to at least 25 per centum of the costs being paid for by the Federal grant. This

requirement will ensure adequate State financial involvement while providing necessary Federal financial assistance.

Two-thirds of the Federal funds for grants are to be allotted to the several States (as defined in the Clean Water Act) based on the table included in the bill. These funds can then be awarded to States with approved management programs to the extent they contribute the required 25 per centum matching funds. The table in subsection (d)(2)(A) presents a percentage allotment for the fifty States, the District of Columbia, and Puerto Rico, computed on factors of population and acreage in production. No State is allotted less than one-half of one per centum of the total two-thirds grant allotment.

The allotment table also provides that one-tenth of one per centum of the allotted funds shall be available for grants to each of the following: American Samoa, Guam, Northern Marianas, Pacific Trust Territories, and the Virgin Islands. The amount of one-tenth of one per centum was selected because of the small populations and acreages in production in each of these areas.

Subsection (d)(2)(B) authorizes the Administrator to award discretionary grants to States (as defined in the Clean Water Act) from the one-third portion of the funds appropriated for grants that he holds in reserve. This provision is intended to give the Administrator authority to provide additional financial assistance in addition to that provided under the allocation formula to States that are seeking to control particularly difficult or serious nonpoint source pollution problems, to implement innovative control methods, or to control interstate nonpoint pollution problems. These grants are to be awarded at 75 per centum of the cost with non-Federal funds paying 25 per centum of the costs.

This provision is intended to provide an additional financial incentive to States to implement the three types of program initiatives described above. These discretionary funds may be used, for example, to address particularly difficult nonpoint source pollution problems. In such cases, the environmental benefits from controlling the pollution may be large, but the State may be reluctant to devote a disproportionate amount of its program funds to one problem. Also, it may be the case that the allotment foumula imperfectly distributes Federal funds to the States with the most extensive problems. In such cases, the Administrator is expected to use the discretionary funds to achieve more effectively the objectives and requirements of this bill. Additional funding to States with particularly difficult problems will result in more expeditous implementation schedules and more rapid reduction in nonpoint source pollutant loadings.

The Administrator also is expected to support States' efforts to develop innovative nonpoint source pollution control practices. Again, the States may perceive little incentive to devote program grant resources to innovation and may properly be reluctant to stake program schedules and commitments on the success of innovative practices. In such cases, the Administrator may support the State's innovative efforts from the discretionary funds.

As discussed above, interstate nonpoint source pollution problems may be difficult because the program costs to control the pollution may accrue mostly to one State while the environmental

benefits accrue mostly to another. In such cases, the Administrator may supply additional discretionary grants to the appropriate State, or may provide additional funding to a joint or cooperative interstate program.

In addition, these funds may be used to assess the relationship between nonpoint source pollution and groundwater quality.

Through these funds are discretionary, the Administrator is expected to use all available funds to support the activities for which they are intended, as described above, in response to applications from the States that meet the requirements and objectives of this bill.

Subparagraph (d)(2)(B) also authorizes the Administrator to make funds available directly to Indian tribes to implement nonpoint source pollution management programs consistent with subsection (a)(1). Such grants will be for 75 per centum of the costs of implementation with the tribes providing 25 per centum of the costs.

Subsection (d)(3) provides that any funds not obligated in the fiscal year for which they were appropriated shall be reallotted in the States according to the table in paragraph (d)(2)(A) in the following fiscal year. This applies to funds not obligated by the Administration under both subparagraphs (A) and (B) of subsection (d)(2).

Subsection (d)(4) provides that States may use Federal funds authorized by this bill for financial assistance to persons only insofar as the assistance is related to costs of implementing demonstration projects. These Federal funds are not to be used as a general subsidy or for general cost sharing to support implementation of best management practices by persons. However, a State is not precluded from using or directing other funds for cost sharing or other incentive programs if it so chooses.

The term "demonstration projects" includes projects designed to educate persons about the application of best management practices and to demonstrate their feasibility and utility as well as research projects to establish the feasibility or cost effectiveness of best management practices.

Initial program grants are required to be awarded to States whose programs meet the requirements of subsection (a)(1). Subsection (d)(5) requires the Administrator to determine, before awarding a subsequent grant to a State, that such State is satisfactorily implementing its management program consistent with its commitments to schedules and milestones. The determination under this subsection is important to assure that States are effectively implementing their programs and that Federal funds obligated under this section are being used effectively to achieve the objectives of this bill.

Subsection (d)(6) authorizes the Administrator to request such information, data, and reports as he may deem necessary to determine future eligibility for grants under this section. Under the authority of this subsection, the Administrator may request information about the management of Federal funds obligated to the States in order to assure that the funds are being used in a manner consistent with the requirements and objectives of this bill and with applicable regulations. If a State refuses to submit information, data, and reports requested by the Administrator, the Admin-

istrator should withhold a State grant authorized under this section.

Subsection (d)(7) authorizes $70 million for fiscal year 1985; $100 million for fiscal year 1986; and $130 million for fiscal year 1987. These funds are authorized to be appropriated for grants to the several States pursuant to the provisions of this subsection and for the payment of salaries and expenses of the Environmental Protection Agency necessary to administer that Agency's obligations under this new section.

Subsection (e) requires each State to submit an annual report to the Administrator on its progress in meeting the schedule submitted pursuant to subsection (a)(1)(e) of this section and, to the extent possible, reductions in nonpoint source pollutant loading and improvements in water quality resulting from implementation of the management program.

Subsection (f)(1) requires the Administrator to transmit to the Office of Management and Budget and appropriate Federal agencies a list of the assistance programs and development projects which each State has identified for review pursuant to the authority of subsection (a)(1)(G) of this bill. Beginning no later than 60 days thereafter each Federal agency is required to amend applicable regulations so that individual assistance applications and projects for the identified programs and development projects are submitted for State review. The appropriate agencies and departments of the Federal Government are required to accommodate, according to the requirements and definitions of Executive Order 12372 (as in effect on September 17, 1983), concerns the State may express about consistency of projects or activities with the State's nonpoint source pollution management program.

The intent of this provision was explained partially in the discussion of subsection (a)(1)(G) earlier in this report. Where the earlier subsection authorized the State to identify Federal programs and development projects for review, this subsection establishes the Federal responsibilities in response to such identifications by the States.

The purpose of the State review is to assure consistency of these Federal activities with the State's nonpoint source management program. If the State expresses a concern about consistency, the Federal agency is required to accommodate the State's concerns according to the requirements and definitions of Executive Order 12372 as in effect on September 17, 1983. The intent, therefore, is not to invent new procedures for Federal/State coordination, but rather to incorporate existing procedures by reference to the Clean Water Act. This is an important provision because, without adequate State review, Federal activities over which the State has no direct authority could undercut its program and its water quality goals, possibly jeopardizing the State's ability to meet its program commitments under this section.

Subsection (f)(2) requires the Administrator to establish an information clearinghouse for information pertaining to the costs and relative efficiencies of best management practices and the relationship between water quality improvement and the implementation of various practices. The purpose of this provision is to promote in-

formation sharing among the States and to provide the basis for technical assistance to State programs.

Subsection (f)(3) requires the Administrator, within three years of enactment, to submit to Congress a report, based on information submitted by the States and such other information as appropriate, describing the management programs being implemented by the States and their experiences in adhering to schedules and implementing best management practices. This report must also describe the amount and purpose of grants awarded under this program; identify the progress made in reducing pollutant loads and improving water quality; and indicate what further actions need to be taken to reduce nonpoint source pollution in the context of the program.

The purpose of this report as well as any reports made to Congress under subsection (c), is to give Congress the information it will need to determine whether the approach taken in this legislation is adequate. This report will document the progress made under this approach and will provide information that will help determine the necessity of future statutory revisions.

The bill amends existing section 304(k)(1) of the Clean Water Act to incorporate a reference to this new section 319. Existing section 304(k)(1) requires the Administrator to enter into agreements with the Secretaries of Agriculture, Interior, and Army and the heads of other appropriate departments and agencies to provide for the maximum utilization of other Federal laws and programs for the purpose of achieving and maintaining water quality through appropriate implementation of plans approved under section 208 of this Act. This amendment would establish the same requirement in terms of management programs developed pursuant to this section.

A new paragraph (5) is added to section 205(j) requiring that the Administrator reserve a portion of a State construction grant allocation to support the implementation of the State nonpoint pollution control program pursuant to section 319 of the Act.

The Administrator is directed to reserve 1% of a State allocation under section 205(c) or $100,000, whichever is greater. The State may request the use of any amount of the amount reserved by the Administrator. If the State identifies an amount less than the full reserved amount but greater than $100,000, the State may use remaining reserved funds for other purposes under title II of the Act. For example, the State would be able to use the funds for direct grants to municipalities for construction of treatment works. If the State requests use of an amount of the reserve less than $100,000, the difference between the requested amount and $100,000 shall remain available to the Administrator and shall be realloted to States able to apply funds to implementation of programs under section 319 and any amount of the reserve greater than $100,000 shall be available to the State for other purposes under this title.

Funds available under this section are to be used to make grants to States for the implementation of the management programs to control nonpoint source pollution development under section 319 of this Act. Funds may be used in conjunction with grants established under section 319(d). The Administrator may establish such administrative and procedural requirements as necessary to assure that funds available to States under this section and section 319(d) are

properly coordinated. Further, the Administrator may require a single application for grants under this section and section 319(d).

Grants under section 205(j)(5) shall meet the Federal/nonFederal cost sharing requirement set forth under section 319. In management of funds under this subsection, however, the Administrator shall not withhold any portion of funds to support special programs.

These funds are intended to be a supplement to the funds authorized by section 319, not to replace them. It is essential that adequate section 319 funds be appropriated in order to assure the development of a strong foundation of nonpoint management plans. In the event section 319 funds are not appropriated, the funds reserved under this subsection will permit modest nonpoint programs to be developed. However, the funds made available by this provision alone are too meager to support the level of program development that is needed to manage nonpoint source pollution.

NATIONAL ESTUARY PROGRAM

The reported bill adds a new section 320 which authorizes the Administrator to convene management conferences to solve pollution problems in interstate and international estuaries. Under the provisions, EPA would convene a management conference if the Administrator determine that the attainment and maintenance of water quality in an estuary requires the control of interstate or international pollution.

Estuaries are sensitive and diverse ecosystems. Their varied fish and wildlife resources and their proximity to large urban areas provide numerous recreational and economic opportunities for millions of citizens. Over the last decade, environmental and other resource values of many estuaries, including Narragansett Bay, Chesapeake Bay, Puget Sound, Long Island Sound, and Hudson River/Rasitan Bay, Buzzards Bay, have experienced serious water quality degradation. Because they receive wastes from upstream areas, which are often trapped by estuarine counter currents, estuaries have been described as "sinks or septic tanks" for heavily populated areas.

The management conferences would be convened for up to five years and would develop comprehensive conservation and management plans which recommend priority actions for the control of point and nonpoint sources of pollution. These conferences shall include representatives of international, interstate, and regional agencies; state and local governments and entities; interested Federal agencies; affected industries, public and private educational institutions and the general public in the estuarine zone. It is important to note, however, that any priority corrective actions or compliance schedules recommended by the conference shall in no manner be less stringent than any requirements of Federal law. Nothing in this section shall affect compliance schedules or other requirements established by law or by the Agency for municipal, industrial or other dischargers.

The Administrator shall approve the plan if it satisfies the purposes of section 320, and the affected Governor or Governors concur. Once a plan is approved, funds authorized to be appropri-

ated under the title II construction grants program, the title VI water pollution control revolving loan program and the section 319 nonpoint source pollution program may be used in accordance with the applicable requirements of the Act, to assist states in implementing programs. This provision does not in any way preclude the use of funds for any eligible project under title II, title VI or section 319 of the Act.

The provision authorizes $12 million annually for the management conferences. Expenses related to the administration of management conferences are not to exceed 10% of amounts appropriated. Grants are provided on a 75 percent Federal, 25 percent non-Federal basis to states, interstate or regional water pollution control agencies to conduct research, monitoring, modeling and other technical work necessary to develop conservation and management plan. Those agencies which receive grants are required to report to the Administrator 18 months after receipt of the grant and biennially thereafter.

EPA has established an Office of Marine and Estuarine Protection through which these provisions are to be implemented. The Office has initiated studies in Narragansett Bay, Buzzards Bay, Long Island Sound, and Puget Sound as authorized by Congress in the EPA's fiscal year 1985 appropriations bill. The Committee expects the Office to continue its involvement and support for these estuaries through this new provision as well as other estuaries as determined by the Administrator.

STORMWATER RUNOFF FROM OIL AND GAS OPERATIONS

This section adds a new subsection (1) to section 402 of the Clean Water Act, specifically exempting certain stormwater runoff discharges from permit requirements and effluent limitations. Discharges from oil or gas exploration, production, processing, or treatment operations are covered by this provision. This refers generally to field operations, and not to refinery operations which are unlikely to meet the requirement that runoff be uncontaminated. To be exempted, such discharges must be composed entirely of flows of precipitation, runoff from conveyances or systems of conveyances used for collecting and conveying such water. Such flows cannot be contaminated with process wastes, toxic pollutants, hazardous substances, or oil and grease. The Administrator shall determine what constitutes contaminated runoff for the purposes of this subsection. Examples of contamination include heavy metals or suspended or dissolved solids from process wastes or disturbed soils, or salts, surfactants, or solvents used or produced in the oil and gas operations. Background levels of toxic pollutants which are naturally occurring (this is, do not result from disturbed soil or other human activity) would not be considered contamination. Runoff exempted under this subsection from effluent limitations may still be subject to stormwater management practice requirements or other nonpoint source controls.

Reference to mining operations was removed from this section of the subcommittee bill during full Committee markup because EPA is currently developing stormwater runoff regulations to address the situation.

Reference to mining operations was removed from the Subcommittee bill during full Committee markup because EPA is currently developing stormwater runoff regulations to address the situation.

ANTI-BACKSLIDING

The bill adds new subsections to section 303 and 402 which clarify the Clean Water Act's prohibition of backsliding on effluent limitations. This prohibition is inherent in the Act's policy of requiring reasonable further progress toward the national goal of the elimination of the discharge of pollutants into waters of the United States. The intent of the policy is to preserve pollution control levels achieved by dischargers by prohibiting the adoption of less stringent treatment or control limitations, standards or conditions than those already contained in a permit except in certain narrow circumstances.

The amendment to section 402 makes explicit that where a permit limitation is based on section 402(a)(1)(B), that limitation may not be made less stringent because there has been a subsequently promulgated effluent guideline that would have resulted in less stringent effluent limitations had it been used as a basis for the permit. This prohibition recognizes that since these "Best Professional Judgment", or (BPJ), permits are issued on a case-by-case basis, they can more accurately consider and reflect the circumstances of an individual facility than is possible in a generic national guideline.

The proposed amendment states that BPJ permits may not be made less stringent "solely" on the basis of a subsequent guideline. This provision is intended to exclude any consideration of a subsequent guideline as a basis for reducing permit limitations. The use of the term "solely" will not allow permittees to use the subsequent guideline as a reason for obtaining less stringent limitations. However, adoption of different limitations could possibly occur based on other very limited, legally permissible circumstances specified in the permit modification regulations.

Where the permittee can demonstrate that installation and adequate operation of treatment facilities has failed to achieve the permitted effluent limitation, limits in the new permit may reflect the level of control actually achieved, but shall not be less stringent than required by the effluent guidelines in effect at the time of permit issuance or renewal.

The amendment to section 402 also addresses the antibacksliding issue in the context of permits developed on the basis of water quality based effluent limitations under section 301(b)(1)(c) or section 303(d) or (e). These permits may be renewed, reissued or modified on the basis of subsequently revised waste load allocation formulas (WLAs) but only if those WLAs are in compliance with a new section 303(d)(5).

Under paragraph (5)(A) of the new subsection, where the applicable water quality standard has not been attained, the total maximum daily load of pollutants or other WLA may be revised only under two circumstances. First, the cumulative effect of the revised effluent limitations based on the total maximum daily loads or

WLA must assure attainment of water quality standards. Backsliding is prohibited for any particular point source except where the effluent limitations in the permits of other point sources discharging into the same receiving waters are contemporaneously revised to be more stringent, so that the cumulative effect of all of the contemporaneous revisions would achieve attainment of water quality standards in the receiving waters. Also, in considering the "cumulative effect" of these permit revisions, EPA or an approved NPDES State agency must consider the impacts on water quality standards and designated uses in waters downstream of the receiving waters. Backsliding cannot be allowed if the cumulative effect of the revised permit effluent limitations interferes with the attainment or maintenance of water quality standards or the protection of designated uses of downstream waters.

Second, the daily maximum load of pollutants or the WLA may only be revised if the designated use of the receiving waters which is not being attained is changed in accordance with the water quality standards regulations established under section 303.

Under paragraph (5)(B) of the new subsection, where water quality in the receiving waters exceeds or equals water quality standards or the levels needed to protect the actual or designated uses of the receiving waters, backsliding from water quality-based effluent limitations is prohibited except to the extent EPA or an approved NPDES state agency proceeds according to the procedures and applying the decision standard of the antidegradation policy established by section 303 of the Act and implemented by 40 C.F.R. sec. 131.12 (1984), and the proposed backsliding is found to be consistent with this antidegradation policy. Therefore, where such water quality exists, even because of the withdrawal of any existing discharge from stream, increases in pollutants from other sources above permit limits can be allowed only where the intergovernmental coordination and public participation provisions of the State's continuing planning process are followed, and the State finds that lower water quality is necessary to accommodate important economic or social development in the area.

SEWAGE SLUDGE

Section 405 of the Clean Water Act is amended to establish a timetable for promulgation of toxic contaminant criteria for sewage sludge use and disposal, to establish a public health and environmental protection basis for these criteria, and to provide authority to implement and enforce criteria for toxic and other pollutants.

A new section 405(d)(2) requires the Administrator to identify by April 1, 1986, toxic pollutants which may be present in sewage sludge in concentrations which may affect public health or the environment. These toxic pollutants are those about which the Administrator currently has available information on the toxicity, persistence, concentration, mobility or potential for exposure on which to base use and disposal criteria. The criteria are to be promulgated by March 1, 1987. Toxic sludge contaminants not included on this list are to be identified by February 1, 1987, and criteria promulgated by December 15, 1987.

This phased approach reflects the fact that the Agency already has sufficient information to establish criteria for some contaminants and some sludge uses, while information may be lacking for other contaminants or uses. The amendment requires the Agency to proceed with regulation where it has the basis to do so. A longer time frame is provided for pollutants where information is not now available. The deadlines represent a substantial extension of the original 1978 deadline in section 405(d) and are based on the Agency's present timetable for establishing the required criteria.

In some cases, the Administrator may not find it feasible to establish numerical criteria for certain contaminants and disposal methods. In such cases, the Administrator may establish a design, equipment, management practice or operational standard in lieu of numerical criteria. This alternative approach must be adequate to protect public health and the environment from any reasonably anticipated adverse effects. This provision is intended to give the Administrator a measure of flexibility, but he is expected to justify any deviation from the presumptive requirement for numerical limits.

New section 405(d)(2)(C) requires compliance with these criteria within twelve months of their promulgation. If new pollution control technology must be constructed, the compliance deadline is extended to two years. In recognition of the fact that some compliance deadlines for toxic contaminants in the second phase of regulation may extend to late 1989, new section 405(d)(2)(E) requires the Administrator to impose permit conditions or to take other steps he deems necessary to protect against adverse effects from contaminated sludge prior to the promulgation of the required regulations.

Section 405(e) is amended to expand the applicability of the 405(d) sludge use and disposal regulations to "any person" and to broaden the scope of the section beyond publicly owned treatment works to include any treatment works treating primarily domestic sewage. The purpose of the first change is to impose the regulations on those that actually dispose of the sludge, which may not be the treatment works' owner or operator. The second change is intended to better reflect Congress' intent that section 405(d) requirements apply to septage treatment and disposal systems and privately and Federally owned treatment works which treat primarily domestic wastes. It is not intended to extend section 405 requirements to treatment works owned by industries which receive a portion of their flow from industrial manufacturing and processing.

The current language of section 405 does not specifically define compliance mechanisms. A new subsection (f) is designed to provide for this by allowing the 405(d) guidelines to be imposed through the NPDES permit program under section 402 of the Clean Water Act, a comparable Federal permit program, or an approved State permit program. To be approved, a State's permit program must have substantive standards at least as stringent as those contained in the 405(d) guidelines. These alternative programs may be used when the Administrator determines that they will assure compliance with applicable requirements of section 405. New subsection (f)(2) authorizes EPA to issue a separate permit solely to impose section 405(d) requirements if the treatment works, such as a land

treatment system, does not require a discharge permit under one of the authorities listed in subsection (f)(1) and is not covered by an appropriate State permit.

Section 405(d) guidelines that are incorporated into a Federal or State permit would be enforceable in the same manner as other permit provisions under the applicable statutory permit-issuance authority. For example, noncompliance with a sludge disposal requirement contained in a hazardous waste disposal permit issued under Subtitle C of the Resource Conservation and Recovery Act would be subject to enforcement under section 3008 of RCRA. Similarly, a sludge disposal requirement in an ocean dumping permit issued under the Marine Protection, Research and Sanctuaries Act would be subject to enforcement under section 107 of MPRSA. Notwithstanding the issuance of a permit that implements a section 405(d) guidelines, the guideline itself would remain directly enforceable under sections 309 and 405(e) of the Act.

INTERSTATE DISPUTE RESOLUTION

The bill as reported amends section 402 of the Clean Water Act to require the Administrator to finally decide disputes between States as to whether a discharge for which one State proposes to issue a permit will cause or contribute to a substantial violation of water quality requirements or adversely affect public health in another State. Under current law, a State whose waters may be affected by the issuance of a permit in another State may submit recommendations to the permitting State. If those recommendations are not accepted by the permitting State, the Administrator may object to the issuance of the permit.

New Section 402(d)(2)(B) requires the Administrator to decide the merits of such a dispute. Where the permitting State fails to accept the recommendations of the downstream State, the Administrator shall determine whether any substantial violation of a water quality requirement (including any standard) or adverse effect on public health of the downstream State would result from the issuance of the permit. If so, the Adminstrator must object to the issuance of the permit or provide specific modifications to the permit. Any determination by the Administrator under this provision would constitute the issuance or denial of a permit and would be subject to judicial review under section 509(b). Thus a State dissatisfied with the Administrator's decision could seek review in the U.S. Court of Appeals for the appropriate circuit.

In addition to the procedure under section 402(d)(2)(B) for resolving disputes over proposed permits, under new section 402(b)(1)(E) a permit which is in effect shall be reconsidered for termination or modification when a downstream State provides notice that the permitted discharge is causing a substantial violation of a water quality requirement (including any standard) or adversely affecting the public health of such State and seeks a modification of the permit. Then, in the permit proceeding to terminate, or modify, or reissue the permit, the affected State may make recommendations under section 402(b)(5) and if they are not accepted, section 402(d)(2)(B) governs.

A new section 511(e) is added by the reported bill, providing a new method of resolving disputes between States over the effects of activities in one State on the water quality of another State. The provision is intended to address sources of pollutants not covered by permits, and therefore not subject to the interstate dispute resolution mechanism of section 402(d)(2)(B). Under section 511(e) a State or municipality which alleges that its water quality is being adversely affected by pollutants from another State may petition the Administrator. The Administrator must then determine on the record, after a hearing under the Administrative Procedures Act, whether such pollution is causing a substantial violation of a water quality requirement (including any standard) of the downstream State or adversely affecting the public health of such State.

If the Administrator so determines, the Administrator must issue an order within 90 days restraining any permit causing or contributing to such pollution or providing such other relief as is appropriate, taking into account the goals and requirements of the Clean Water Act and other equitable considerations. Such an order is judicially reviewable. This broad authority is comparable to that under section 303 of the Clean Air Act or section 7003 of the Solid Waste Disposal Act, although those are limited to situations involving imminent and substantial endangerment. The Administrator, in fashioning remedies under this authority, should exercise prudence to assure that the relief granted is comparable in scope and magnitude to the violation and the injury. In addition to the adjudicatory hearing called for in section 511(e), the Administrator may wish to convene a more informal management conference involving the affected States and municipalities to frame the issues and facilitate a resolution. Such conferences could be similar to the enforcement conferences under the Federal Water Pollution Control Act prior to the 1972 amendments. The determination and any administrative order issued under section 511(e), however, would be the responsibility of the Administrator.

In no case shall orders or other relief based solely on new section 511(e) supersede or abrogate rights to quantities of water which have been established by interstate water compacts, Supreme Court decrees, or State water laws. This new subsection does not apply in any case in which section 402(d)(2)(B) or section 402(b)(1)(F) is available, nor to any pollution which is subject to the Colorado River Salinity Control Act of 1974, nor to any water pollution which results from emissions from mobile or stationary sources which are regulated under the Clean Air Act.

These dispute resolution mechanisms are used only where the violation of the water quality requirement is found by the Administrator to be substantial. In determining whether a water quality requirement violation is "substantial," the Administrator may consider factors such as, but not limited to, the following: the volume of the discharge, the frequency and duration of the violation, as well as consequences of the violation (in some cases, for example, a violation which is not "substantial" in volume, could be "substantial" in terms of consequences). This assures that these provisions are not used by downstream States in an attempt to alter the water quality standards of upstream States in the absence of a significant pollution problem emanating from upstream States.

Economic or other competition between States is an inappropriate motive and impermissible grounds for the use of either section 402(d)(2)(B) or section 511(e). In weighing the equities under either section, the Administrator should not allow the imposition of controls in the upstream State, at the instance of a downstream State, which the downstream State is not willing to impose on similar sources within its boundaries affecting the same water body.

PRESERVATION OF OTHER RIGHTS

The reported bill amends section 505 of the Clean Water Act, the citizen suit provisions, to clarify that nothing in the Act displaces, preempts, or limits the ability of any person injured by noncompliance with any Clean Water Act requirement or permit to seek damages under other Federal statutes. In addition, new subsection (e)(3) provides that States or municipalities may bring actions involving State law, in cases involving water pollution arising in another State, in Federal district court, in either the State bringing the action or the State in which the cause of action arose. This will provide access to a neutral forum, the Federal courts, for resolution of interstate disputes, for States and municipalities which are not now covered by 28 U.S.C. 1332, the statute granting jurisdiction of Federal courts based on diversity of citizenship of the parties.

The purpose of this section is to preserve legal rights which exist by virtue of State statute or common law or other Federal statutes. This amendment does not create new rights or expand those which previously existed. New subsection (e)(3) places a State or municipality in the same position as one of its citizens for the purpose of gaining access to Federal court under the diversity of citizenship jurisdiction. It is not intended to create any new substantive rights or affect the application of choice of law rules by the Federal courts.

HAMPTON, N.H. AD VALOREM TAX AMENDMENT

This section permits the Town of Hampton, New Hampshire, to continue using its ad valorem tax user charge system for collecting the costs of operation and maintenance of its sewage treatment works. Previously, Hampton had been unable to submit its ad valorem tax system to the Environmental Protection Agency for review and approval because of a disagreement over whether the tax system was dedicated to this purpose as of December 27, 1977. The Committee finds that Hampton's ad valorem tax system was in place and in operation as of this date, and therefore is deemed to have been dedicated as of this date. The Committee also finds that Hampton developed a user fee tax system only under duress, and such system was never implemented. It is the Committee's understanding that Hampton's ad valorem tax meets all the remaining requirements of section 204(b)(1) and other related regulations, and the Agency is to review the system for compliance.

LIMITATION ON DISCHARGE OF RAW SEWAGE BY NEW YORK CITY

The reported bill contain provisions which limit the volume of raw sewage discharged by the city of New York. The limitations

apply to the drainage areas of two sewage treatment plants currently under construction, North River in Manhattan and Red Hook in Brooklyn.

Raw discharges from the North River drainage area will be limited after August 1, 1986, if the North River plant has not achieved advanced preliminary treatment by that deadline, as required by a consent decree signed on December 29, 1982 by the United States, the State of New York, and the City of New York. The raw discharge in any 30 day period may not exceed 30 times the average daily raw discharge during a specific one year base period. The base period is the year ending on March 15, 1986, or on the date the plant becomes operational, whichever is earlier.

Raw discharges from the Red Hook drainage area will be similarly limited, except that the deadline and the base period are one year later than for the North River drainage area.

The Administrator shall waive these limitations if an increased discharge constituting a violation is caused by certain events, but only to such extent and for such limited period of time as the Administrator determines to be necessary to take into account the event. These events include an interruption in plant operation due to circumstances beyond the control of New York City, and precipitation. In addition, a waiver shall be granted in the event that a violation is due to a random or seasonal variation in flow, and that any sewer hookup occurring or permit granted after July 31, 1986, for North River and July 31, 1987, for Red Hook is not responsible for such violation.

The Administrator is also required to extend either deadline if necessary to account for circumstances beyond the control of New York City. A deadline may not be extended on the basis of a lack of Federal funding under section 201 of the Federal Water Pollution Control Act, a lack of New York State or New York City funding, or a policy decision by New York State or New York City to delay the achievement of advanced preliminary treatment.

For enforcement purposes, violations of the discharge limitations are to be treated as violations of section 301 of the Federal water Pollution Control Act. If the Administrator makes a determination that a violation has occurred and that there is no basis for a waiver or deadline extension, the Administrator must start an enforcement action under section 301 within another 30 days.

This section states that it is the sense of the Congress that the Administrator should not agreee to any further modification of the consent decree with respect to the schedule for achieving advanced preliminary treatment.

Under a "sunset" provision, any limitations remain in effect in a drainage area until the treatment plant for that area has achieved advanced preliminary treatment for six consecutive months.

The Administrator is responsible for performing all flow monitoring needed to determine the discharge limitations. The Administator must, by July 31, 1986, for North River and July 31, 1987, for Red Hook, establish the methodologies and collect any information necessary for making determinations whether a waiver or deadline extension will be required. If the Administrator detects a violation, the Administrator must determine within 30 days whether a waiver or deadline extension is required. New York City is respon-

sible for providing any additional information requested by the Administrator in order to make this determination.

CHESAPEAKE BAY

The Administrator is required to establish an Office of Chesapeake Bay Programs in support of a continuing State/Federal Chesapeake Bay program, at an authorization level of $3 million for the purposes of a) collecting, coordinating, and disseminating all research information concerning the environmental quality of the Bay, b) conducting research to identify the sources, quantity, and effects of sediment deposition on the Bay, c) conducting research on the impacts of pollutant loadings on the Bay's water quality and biota.

The Administrator is authorized to make grants to those States affected by the Chesapeake Bay interstate management plan, at the request of the Governors, which commit to implement all or substantially all aspects of the plan within one year from enactment. States are required to submit a description of selected abatement actions and estimated costs for the Administrator's approval. The Federal share, with an authorization level of $10 million per year, will not exceed 55 percent of annual implementation costs. Administrative costs are limited to 10 percent of the annual Federal grant made to the State. States receiving grants must submit a progress report 18 months after receipt and biennally thereafter.

Management of the Chesapeake Bay Program has been assisted by a State/Federal committee, including water quality officials from the major States in the Chesapeake Bay Basin. Implementation of the results of this Chesapeake Bay Study will require a partnership between the Federal Government and the individual States. Because of the involvement of water quality managers in guiding the policy and program decisions of the Chesapeake Bay Program, the recommendations are likely to be more realistic and the managers are likely to be more committed to implementation of the results.

The findings of the Chesapeake Bay Program underscore the fact that the Chesapeake Bay is an ecosystem which ignores State boundaries. In addition to individual State commitments to implementation of the Chesapeake Bay Program recommendations. The States and the Federal Government must make the commitment collectively to continue interstate communication, cooperation, and coordination on the Chesapeake Bay.

In an unusual, and perhaps unprecedented way, the U.S. Environmental Protection Agency relied on the State/Federal Management Committee to set program directions and make policy decisions. The Chesapeake Bay Program Management Committee is an excellent model for Federal/State cooperation in environmental research/management studies.

The Chesapeake Bay Program was initially structured as a research program with little or no emphasis on management implications. Preliminary results of the research showed that the orientation of the research scientists had been to describe the current conditions of the Bay in objective, quantitative terms rather than to point out problems, explore causes, and suggest solutions. The

Chesapeake Bay Program Management Committee members, particularly the State water quality managers, insisted that the scientific researchers had a responsibility to tell them what needed to be done to reverse the declining resource trends which they had identified in the Bay.

Several products of the Chesapeake Bay Program resulted from this pressure by the Management Committee which were not initially conceived when the Chesapeake Bay Program began.

1. The synthesis of the findings of 45 individual scientific research reports into a single report which "pushes" the science to suggest management implications.

2. A comprehensive report characterizing the overall environmental health of the Bay through a statistical analysis of trends and the current condition of many water quality and fisheries productivity parameters.

3. A final Management Report recommending actions to maintain and improve the health of the Bay.

The success of the Chesapeake Bay Program so far, in maintaining the support of Congress and the States, can be, in large part, attributed to the Management Committee. The future likelihood that the Chesapeake Bay Program recommendations will be implemented is probably due almost exclusively to the Management Committee. By their intensive participation during the Chesapeake Bay study, the State and Federal managers have shaped a product that reflects their needs, and is something they can readily take action on.

GREAT LAKES

A new section 118 establishes by law the Great Lakes National Program Office within the EPA. Such an office has already been established administratively and is located in Chicago. This section more clearly defines its duties, enhances its accountability to Congress, and authorizes funding.

In 1982 the General Accounting Office published a report on U.S. compliance with the Great Lakes Water Quality Agreement of 1978, an agreement with Canada that specifies detailed water pollution control goals. The report concludes that the U.S. is failing to meet its commitments, especially with respect to toxic chemicals and nonpoint source pollution. This is due in part to the absence of a comprehensive approach to Great Lakes Water Quality.

The Program Office is given three basic duties: developing and implementing plans to carry out U.S. responsibilities under the Great Lakes Water Quality Agreement of 1978, establishing a water quality surveillance network, and serving as the liaison to the Canadian members of the International Joint Commission and the Canadian counterpart to the EPA. In addition, the office is required to develop programs for control of nutrients, including phosphate, and toxic chemicals. The nutrient program will incorporate any actions taken in the Great Lakes basin under the nonpoint source pollution program established in section 319 of the Clean Water Act and will inciude nutrient monitoring. The toxic chemicals program will emphasize the removal of pollutants from bottom sediments.

The EPA's annual budget submission to Congress is to include a funding request for the Program Office as a separate line item.

This section requires the Administrator to submit an annual Great Lakes report to Congress. The report will describe recent progress toward implementing the Great Lakes Water Quality Agreement of 1978 and the system of water quality surveillance, prospects for improving water quality, and planned efforts to implement the agreement.

To enhance cooperation among agencies, the head of each Federal agency involved in programs related to the Great Lakes is required to submit an annual report to the Administrator. The reports will describe the agencies' activities affecting compliance with the agreement.

This section authorizes $10,000,000 per year for fiscal years 1986 through 1990 for the Great Lakes National Program Office to carry out its duties under the section.

CLEAN LAKES

Section 314 of the Act is amended to provide for effective reporting of lake quality by State agencies on a regular basis. Reports are to identify lakes in each State, identify lakes with impaired uses, and include a description of the State program for lake protection.

The Committee reaffirms its belief that lakes are a vital national resource. Fifty percent of the nation's water supply comes from lakes and lakes offer outstanding recreational opportunities. There is evidence, however, of declines in lake quality. A recent survey by the North American Lakes Management Society found that 4,200 lakes in 38 States suffer impaired uses.

Despite this evidence there is currently no comprehensive and complete picture of the quality of lakes nationally. In addition, there is no clear description of trends in lake quality. Section 314 of the Act originally provided for single lake report from States. These reports were completed and submitted a number of years ago and the material in the reports is dated. The amendment to section 314 will provide for regular and complete reporting on lake quality and will be a basis for future assessment of the condition of lakes and the need for protection programs.

To avoid unnecessary reporting burden, the lake quality reports will be included in the State water quality report prepared every two years under section 305(b) of the Act. Also, a State must prepare and submit a lake quality report to EPA in order to receive a grant under section 314 of the Act.

Finally, section 314 is amended to include saline lakes under the Clean Lakes Program.

LAKE PEND OREILLE STUDY C

A comprehensive water quality investigation of the Clarks Fork/Lake Pend Oreille system in Idaho and Montana is needed to identify sources of pollution and the remedial measures necessary to protect and enhance the water quality of this important resource. The Clarks Fork/Pend Oreille system is a primary feature of the environment of northern Idaho, western Montana and eastern Washington. The river drains an area of more than 22,000 square

miles. The lake, with a surface area of 125 square miles is Idaho's largest. The principal inflow from the lake is the Clarks Fork River.

Perceived deterioration of water quality in the lake and known pollution sources in the Clarks Fork drainage (including three "Superfund" sites) led to the initiation, in 1984, of water quality studies by both the states of Idaho and Montana. These studies are still in progress but it is clear that the states do not have the resources to do the total job. An adequate study must include (1) a thorough evaluation of the source and rate of nutrients, sediments and toxic materials entering the Clarks Fork River and their downstream movement and (3) the development of a comprehensive, coordinated water quality management plan to assure protection in the future.

The studies authorized in this section should supplement the ongoing State efforts and help assure protection of this immensely valuable regional resource.

TITLE II

CONSTRUCTION GRANT AUTHORIZATION C

The bill amends section 207 of the Clean Water Act to authorize $2.4 billion annually for the Title II construction grants program for fiscal years 1986 through 1988, and not to exceed $1.2 billion annually for fiscal years 1989 and 1990. It is the intent of the Committee that funding for the Title II construction grants program be concluded as of 1990. Therefore, even though other section of this bill authorize Federal funds for capitalizing State Revolving Funds through 1994, no further Title II construction grants program authorizations are provided after fiscal year 1990.

The bill provides States and municipalities with the clear intent that the transition to State/local funding initiated in the 1981 amendments will be completed during the period of this authorization. By signaling the end of the Title II construction grants program, States and municipalities will be able to plan effectively for assumption of increased funding responsibilities. In conjunction with provisions for State Revolving Funds, the bill encourages States and municipalities to take all actions needed to assure the adequate and timely planning, design, financing, construction, operation, maintenance, expansion, and replacement of needed wastewater treatment facilities.

The bill amends section 205(e) of the Clean Water Act by extending authorization dates through 1994.

ALLOCATION

The reported bill amends section 205(c) of the Act to establish an allotment formula for distributing construction grant funds and State revolving fund capitalization grants among States for the fiscal years 1986 through 1990. The formula in existing law expires with the fiscal year 1985 authorization. The allotment formula in the reported bill states as a 6-place decimal fraction the share of the total appropriation each State will receive in each of the fiscal years for which it is applicable. The following table contains the allotment share for each State, plus the amount in dollars each State

will receive if the authorized level of $2.4 billion per year is appropriated.

TABLE I

States	Proposed formula hamless	Dollar amount
Alabama	0012500	$29,550,000
Alaska	007563	17,879,296
Arizona	012500	29,550,000
Arkansas	011714	27,692,190
California	058321	137,870,371
Colorado	010503	24,828,134
Connecticut	012500	29,550,000
Delaware	005801	13,713,142
District of Columbia	009172	21,681,649
Florida	045181	106,807,659
Georgia	014570	34,443,226
Hawaii	007440	17,587,017
Idaho	007272	17,190,998
Illinois	036881	87,186,211
Indiana	019653	46,459,219
Iowa	012672	29,955,509
Kansas	012337	29,163,619
Kentucky	015044	35,565,155
Louisiana	014380	33,994,455
Maine	009772	23,101,098
Maryland	019722	46,623,754
Massachusetts	036195	85,565,800
Michigan	035063	82,889,405
Minnesota	014938	35,431,632
Mississippi	012500	29,550,000
Missouri	025422	60,098,007
Montana	005411	12,790,689
Nebraska	007467	17,652,861
Nevada	006805	16,087,922
New Hampshire	012500	29,550,000
New Jersey	048867	115,521,309
New Mexico	006814	16,109,087
New York	090478	213,889,046
North Carolina	016168	38,220,388
North Dakota	004658	11,011,090
Ohio	045906	108,522,730
Oklahoma	012223	28,895,553
Oregon	011794	27,881,960
Pennsylvania	032302	76,360,982
Rhode Island	007428	17,560,296
South Carolina	013399	31,675,801
South Dakota	005400	15,129,880
Tennessee	016674	39,417,112
Texas	053882	127,376,361
Utah	012486	29,515,795
Vermont	006581	15,558,049
Virginia	016689	39,452,323
Washington	028665	67,764,523
West Virginia	012712	30,051,168
Wisconsin	022322	52,768,070
Wyoming	005359	12,669,674
Samoa	000732	1,730,448
Guam	000567	1,340,720
Mariana Islands	000533	1,259,464
Puerto Rico	012640	29,880,714
Trust Territory	001409	3,331,485
Virgin Islands	000464	1,096,952

The allotment formula in the reported bill is based on each State's needs for sewage treatment facilities, as expressed in the 1984 Needs Survey. This survey, conducted by the Environmental Protection Agency with the cooperation of the States, is the most current, complete, and accurate determination available of the needs for publicly owned treatment works which can be assisted under titles II and VI of the Act.

The formula is based on each State's aggregate needs for facilities providing secondary treatment (Category I of the Needs Survey), advanced waste treatment required by water quality standards (Category II), and correction of infiltration or inflow problems (Category IIIA), and for interceptor sewers (Category (IVB)). These are the only categories of treatment works fully eligible for funding under title II. In restricting eligibility to these categories of facilities in the 1981 amendments to the Clean Water Act, the Congress made a judgment that on a national basis these are the facilities most related to attainment of the water quality goals of the construction grant program. Also, these are the core treatment facilities which must be completed in the next few years to meet the Municipal Compliance Strategy and the 1988 secondary treatment deadline for municipalities.

Table 2 illustrates the State-by-State distribution of needs in these four eligible categories, according to the 1984 Needs Survey. In order to reach the allotment formula contained in the reported bill, several additional steps were performed on the raw needs shares reflected in this table. First, those States with very small remaining needs were identified. These are the States which need somewhat more than an allotment strictly on their share of needs, in order to have a manageable program of sufficient size to make meaningful investments in sewage treatment facilities. Also, especially for those among these States whose share would be dropping substantially because of changes in needs and allotment formulas, a larger share is needed to assure program momentum and avoid disruption.

In allotment formulas adopted by the Congress in the past, these purposes have been served by a flat minimum allotment per State of one-half of one percent. This is somewhat arbitrary, and diverts a larger share of the total to these smaller States than would result from their raw needs. Because the number of such States is growing, as the construction grant program nears its objectives, a mechanism was sought for assuring adequate program size for smaller States. This approach is more reflective of needs and less arbitrary than the minimum allocation approach.

The allotment formula in the reported bill accords this treatment to two groups of States with small shares of eligible needs. The 13 States whose individual needs are less than one-half of one percent of the total receive an aggregate allotment of 8.5 percent. This compares to the 6.5 percent these States would receive in the aggregate if the historic minimum allotment approach were followed, although the actual needs for these States constitute only 3.7 percent of the total. The eight States whose individual needs are less than one percent of the total but greater than one half of one percent, receive an aggregate allotment of 9 percent. The actual needs of these States constitute 6 percent of the total.

The actual needs of the States in the group with the lowest needs vary by 850 percent. Actual needs of the highest State in the second group are nearly twice those of the lowest State. A method was sought to reduce the variation among States in these groups, in the allotment of the increased share assigned to the groups, without resorting to an arbitrary minimum share. A standard statistical approach to reducing such variation is to consider the relationship of the logarithms of the numbers, rather than the relationship of the numbers themselves. Therefore, the allotment of funds among States with an actual individual share of total eligible needs of less than one-half of one percent is based on the logarithm of those actual needs as a fraction of the sum of the logarithms of actual needs for all the States in that group. This is illustrated in Table 3.

Because the States with an actual individual share of total eligible needs of one-half of one percent to one percent exhibit less variation, and have program levels closer to those of States with larger needs, a method was employed to reduce that variation, but to a lesser degree than the use of logarithms. The allotment among States in this group is based on the cube of the logarithm of the actual needs of a State as a fraction of the sum of the cubes of the logarithms of actual needs for all the States in that group. This is illustrated in Table 4. The cube of the logarithm was selected because it reduced the variation from that among actual needs, but not as much as the simple use of logarithms would have produced.

The remaining States, with individual actual needs in excess of one percent of total eligible needs, are allotted 82.5 percent of appropriated funds. So that no State in this group receives an allotment less than that of a State with smaller actual needs, as a result of the overconcentration of funds in the groups of States with smaller needs, the allotment formula in the reported bill provides a minimum 1.25 percent for five States (Alabama, Arizona, Connecticut, Mississippi, and New Hampshire).

Because of changed eligibilities and greatly decreasd needs since the 1980 and 1976 Needs Surveys on which the previous allotment formula was based, a number of States would suffer dramatic losses compared to that formula if an allotment based solely on eligible needs were adopted. To minimize the program disruption which would result from such reductions, the allotment formula in the reported bill contains a "hold harmless" provision, guaranteeing each State 80 percent of the allotment it had under the previous allotment formula. Eleven States benefit from this "80 percent hold harmless" provision: California, Illinois, Indiana, Maryland, Michigan, Minnessota, New York, Ohio, Pennsylvania, Virginia, and West Virginia. The money to bring these States up to the hold harmless level, of course, is derived by reducing the shares of other States with individual needs in excess of one percent of total eligible needs.

The 1981 amendments directed the preparation of a needs survey in which the allotment of sewage treatment construction funds could be related to water quality improvements, rather than merely to the estimated dollar costs of proposed treatment facilities. The 1981 Needs Survey does contain a water quality assessment, but information was not available in sufficient detail on

which to base State-by-State allotment. Available information is uneven, and most useful aggregated at the national or hydrologic regional level. Future needs surveys will refine information on the water quality improvements associated with different facility investments. In the meantime, currently available information must continue to rely on the costs of facilities needed to meet the secondary treatment requirement and more advanced treatment levels needed to meet water quality standards as a surrogate for water quality impact.

One matter of concern to the Committee is the effect of future investments in wastewater treatment facilities on water quality of the Great Lakes, a valued national resource. In addition, the United States has obligations to protect and enhance water quality in the Great Lakes under the 1978 Canada-United States Great Lakes Water Quality Agreement. That Agreement commits the United States to provide financial assistance to construct publicly owned waste treatment works in the Great Lakes Region.

According to the 1984 Needs Survey, year 2000 total needs for the Great Lakes hydrologic region are $7.850 billion. This represents 9.16 percent of the year 2000 total needs for the United States (although the population served by these facilities is 8.1 percent of the U.S. total population served by needed facilities). Under the allotment formula in the reported bill, the seven States bordering the Great Lakes receive over 26 percent of annual appropriations, although the selection of specific projects within each State is a matter of State priority. According to EPA, since 1972, $15.3 billion in Federal construction grants have been obligated in the Great Lakes States, of which $5.6 billion has been in subbasins tributary to the Great Lakes. Since 1978, an estimated $3.5 billion in grants has been awarded in subbasins tributary to the Great Lakes. Historically one-half to two-thirds of that was for categories of facilities currently fully eligible.

There is great variation among the Great Lakes States in the proportion of State needs which are in basins tributary to the lakes themselves, and in the absolute size of those needs. Subbasins tributary to the Great Lakes in Minnesota report $5 million in year 2000 total needs, while those in New York may exceed $2.5 billion.

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Table 2

Future Year 2000 Publicly Owned Wastewater Treatment Needs
Categories, I, II, IIIA, IVB in dollars

	Cat. I	Cat II	Cat.IIIA	Cat.IVB	Totals, Cat. I.II.IIIA.IVB	Percent of Total
ALABAMA	282,000,000	84,000,000	89,000,000	245,000,000	700,000,000	0.013162
ALASKA	140,000,000	0	5,000,000	119,000,000	264,000,000	0.004964
ARIZONA	375,000,000	69,000,000	10,000,000	138,000,000	592,000,000	0.011131
ARKANSAS	261,000,000	48,000,000	30,000,000	92,000,000	431,000,000	0.008104
CALIFORNIA	2,318,000,000	117,000,000	339,000,000	849,000,000	3,623,000,000	0.068122
COLORADO	222,000,000	20,000,000	5,000,000	100,000,000	347,000,000	0.006525
CONNECTICUT	432,000,000	76,000,000	17,000,000	185,000,000	710,000,000	0.013350
DELAWARE	26,000,000	2,000,000	5,000,000	39,000,000	72,000,000	0.001354
DIST OF COL	97,000,000	171,000,000	0	0	268,000,000	0.005039
FLORIDA	1,352,000,000	290,000,000	117,000,000	1,097,000,000	2,856,000,000	0.053700
GEORGIA	352,000,000	191,000,000	67,000,000	311,000,000	921,000,000	0.017317
HAWAII	140,000,000	0	0	93,000,000	241,000,000	0.004531
IDAHO	137,000,000	11,000,000	6,000,000	59,000,000	213,000,000	0.004005
ILLINOIS	707,000,000	300,000,000	166,000,000	281,000,000	1,454,000,000	0.027337
INDIANA	353,000,000	130,000,000	21,000,000	134,000,000	638,000,000	0.011996
IOWA	431,000,000	92,000,000	63,000,000	215,000,000	801,000,000	0.015061
KANSAS	173,000,000	1,000,000	20,000,000	285,000,000	479,000,000	0.009006
KENTUCKY	316,000,000	105,000,000	80,000,000	450,000,000	951,000,000	0.017881
LOUISIANA	466,000,000	25,000,000	85,000,000	333,000,000	909,000,000	0.017092
MAINE	166,000,000	2,000,000	22,000,000	112,000,000	302,000,000	0.005678
MARYLAND	272,000,000	595,000,000	57,000,000	186,000,000	1,110,000,000	0.020871
MASSACHUSETTS	1,404,000,000	116,000,000	35,000,000	733,000,000	2,288,000,000	0.043020
MICHIGAN	1,250,000,000	267,000,000	39,000,000	649,000,000	2,205,000,000	0.041460
MINNESOTA	474,000,000	132,000,000	19,000,000	252,000,000	877,000,000	0.016490
MISSISSIPPI	268,000,000	84,000,000	59,000,000	161,000,000	572,000,000	0.010755
MISSOURI	1,049,000,000	4,000,000	49,000,000	505,000,000	1,607,000,000	0.030216
MONTANA	20,000,000	2,000,000	1,000,000	31,000,000	54,000,000	0.001015
NEBRASKA	177,000,000	0	1,000,000	68,000,000	246,000,000	0.004625
NEVADA	84,000,000	30,000,000	3,000,000	26,000,000	151,000,000	0.002839
N HAMPSHIRE	240,000,000	8,000,000	9,000,000	298,000,000	555,000,000	0.010435
N JERSEY	2,257,000,000	144,000,000	100,000,000	502,000,000	3,009,000,000	0.056581
N MEXICO	108,000,000	1,000,000	0	43,000,000	152,000,000	0.002858
NEW YORK	3,267,000,000	279,000,000	106,000,000	1,175,000,000	4,867,000,000	0.091512
NORTH CAROLINA	283,000,000	106,000,000	97,000,000	536,000,000	1,022,000,000	0.019216
NORTH DAKOTA	23,000,000	0	0	8,000,000	31,000,000	0.000583
OHIO	701,000,000	501,000,000	99,000,000	1,193,000,000	2,494,000,000	0.046902
OKLAHOMA	252,000,000	79,000,000	13,000,000	126,000,000	470,000,000	0.008837
OREGON	147,000,000	27,000,000	70,000,000	185,000,000	437,000,000	0.008217
PENNSYLVANIA	1,307,000,000	295,000,000	14,000,000	324,000,000	1,940,000,000	0.036477
RHODE ISLAND	132,000,000	13,000,000	1,000,000	93,000,000	239,000,000	0.004494
SOUTH CAROLINA	317,000,000	50,000,000	75,000,000	405,000,000	847,000,000	0.015926
SOUTH DAKOTA	67,000,000	20,000,000	1,000,000	24,000,000	112,000,000	0.002106
TENNESSEE	424,000,000	97,000,000	157,000,000	376,000,000	1,054,000,000	0.019818
TEXAS	1,663,000,000	233,000,000	225,000,000	1,285,000,000	3,406,000,000	0.064042
UTAH	319,000,000	73,000,000	43,000,000	56,000,000	491,000,000	0.009232
VERMONT	76,000,000	29,000,000	4,000,000	19,000,000	128,000,000	0.002407
VIRGINIA	694,000,000	66,000,000	18,000,000	236,000,000	914,000,000	0.017185
WASHINGTON	1,057,000,000	18,000,000	124,000,000	633,000,000	1,832,000,000	0.034450
W VIRGINIA	390,000,000	20,000,000	5,000,000	199,000,000	614,000,000	0.011545
WISCONSIN	616,000,000	33,000,000	52,000,000	710,000,000	1,411,000,000	0.026531
WYOMING	34,000,000	8,000,000	1,000,000	9,000,000	52,000,000	0.000978
A SAMOA	15,000,000	0	0	18,000,000	33,000,000	0.000620
GUAM	23,000,000	0	2,000,000	8,000,000	33,000,000	0.000620
N MARIANAS	13,000,000	1,000,000	0	17,000,000	31,000,000	0.000583
PUERTO RICO	794,000,000	4,000,000	26,000,000	375,000,000	799,000,000	0.015023
TRUST TERR	59,000,000	1,000,000	0	22,000,000	82,000,000	0.001542
VIRGIN ISLANDS	16,000,000	0	1,000,000	10,000,000	27,000,000	0.000508
					0	0.00000
	28,616,000,000	5,110,000,000	2,821,000,000	16,629,000,000	53,184,000,000	1.00000

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TABLE 3

STATE	Present Allotment	2000 Needs	log needs	percent total	0.5% total
Alaska	0.006101	264	2.4216	0.080970	0.007563
Nebraska	0.005214	246	2.3909	0.067850	0.007467
Hawaii	0.007895	241	2.3820	0.087523	0.007439
Rhode Island	0.006750	239	2.3784	0.087391	0.007428
Idaho	0.004965	213	2.3284	0.085554	0.007272
New Mexico	0.004965	152	2.1818	0.080167	0.006814
Nevada	0.004965	151	2.1790	0.080064	0.006805
Vermont	0.004965	120	2.1072	0.077426	0.006581
South Dakota	0.004965	112	2.0492	0.075295	0.006400
Delaware	0.004965	72	1.8573	0.068244	0.005801
Montana	0.004965	54	1.7324	0.063655	0.005411
Wyoming	0.004965	52	1.7160	0.063052	0.005359
North Dakota	0.004965	31	1.4914	0.054799	0.004658
	0.070645	1955	27.2156	0.999998	0.085000

TABLE 4

STATE	PRESENT ALLOTMENT	2000 NEEDS	NEEDS % TOTAL	LOG NEEDS	LOG % TOTAL	LOG CUBED	CUBE % TOTAL	9%
UTAH	0.005371	491	0.1522	2.6911	0.1296	19.4806	0.1387	0.012486
KANSAS	0.009201	479	0.1485	2.6803	0.1291	19.2561	0.1371	0.012337
OKLAHOMA	0.008235	470	0.1457	2.6721	0.1287	19.0791	0.1358	0.012223
OREGON	0.011515	437	0.1355	2.6405	0.1271	18.4090	0.1310	0.011794
ARKANSAS	0.006668	431	0.1336	2.6345	0.1269	18.2045	0.1302	0.011714
COLORADO	0.000154	347	0.1076	2.5403	0.1223	16.3934	0.1167	0.010507
MAINE	0.007780	302	0.0936	2.4800	0.1194	15.2531	0.1086	0.009772
DIST OF COL	0.004965	268	0.0831	2.4281	0.1169	14.3159	0.1019	0.009172
	0.061897	3225	1.0000	20.7669	1.0000	140.4805	1.0000	0.090001

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TABLE 5

Future Year 2000 Publicly Owned Wastewater Treatment Needs
Eligible For Federal Financial Assistance Under the Clean Water Act

	Cat. I	Cat. II	Cat.IIIA	Cat.IIIB	Cat. IVA	Cat.IVB	Cat. V	Total All Categories	Percent of Total Needs *
ALABAMA	282,000,000	84,000,000	89,000,000	2,000,000	366,000,000	245,000,000	0	1,068,000,000	0.010492
ALASKA	140,000,000	0	5,000,000	0	21,000,000	119,000,000	6,000,000	291,000,000	0.002859
ARIZONA	375,000,000	69,000,000	10,000,000	1,000,000	211,000,000	138,000,000	0	804,000,000	0.007898
ARKANSAS	261,000,000	48,000,000	30,000,000	2,000,000	139,000,000	92,000,000	0	572,000,000	0.005619
CALIFORNIA	2,318,000,000	117,000,000	339,000,000	468,000,000	1,708,000,000	889,000,000	514,000,000	6,313,000,000	0.062017
COLORADO	222,000,000	20,000,000	5,000,000	1,000,000	27,000,000	100,000,000	15,000,000	390,000,000	0.003831
CONNECTICUT	432,000,000	76,000,000	17,000,000	20,000,000	717,000,000	185,000,000	441,000,000	1,888,000,000	0.018547
DELAWARE	26,000,000	2,000,000	5,000,000	5,000,000	40,000,000	39,000,000	182,000,000	299,000,000	0.002937
DIST OF COL	97,000,000	171,000,000	0	0	0	0	31,000,000	299,000,000	0.002937
FLORIDA	1,352,000,000	290,000,000	117,000,000	18,000,000	1,656,000,000	1,097,000,000	3,000,000	4,533,000,000	0.044531
GEORGIA	352,000,000	191,000,000	67,000,000	15,000,000	338,000,000	311,000,000	169,000,000	1,443,000,000	0.014176
HAWAII	148,000,000	0	0	19,000,000	322,000,000	93,000,000	0	582,000,000	0.005717
IDAHO	137,000,000	11,000,000	6,000,000	3,000,000	130,000,000	59,000,000	8,000,000	354,000,000	0.003478
ILLINOIS	709,000,000	300,000,000	166,000,000	38,000,000	190,000,000	281,000,000	2,522,000,000	4,204,000,000	0.041299
INDIANA	353,000,000	130,000,000	21,000,000	3,000,000	206,000,000	134,000,000	1,215,000,000	2,142,000,000	0.021042
IOWA	431,000,000	92,000,000	63,000,000	2,000,000	125,000,000	215,000,000	166,000,000	1,094,000,000	0.010747
KANSAS	173,000,000	1,000,000	20,000,000	22,000,000	109,000,000	285,000,000	252,000,000	862,000,000	0.008468
KENTUCKY	316,000,000	105,000,000	80,000,000	6,000,000	636,000,000	450,000,000	201,000,000	1,794,000,000	0.017624
LOUISIANA	466,000,000	25,000,000	65,000,000	18,000,000	461,000,000	333,000,000	0	1,388,000,000	0.013635
MAINE	146,000,000	2,000,000	22,000,000	10,000,000	233,000,000	112,000,000	307,000,000	932,000,000	0.009156
MARYLAND	272,000,000	595,000,000	57,000,000	57,000,000	254,000,000	186,000,000	25,000,000	1,446,000,000	0.014205
MASSACHUSETTS	1,404,000,000	116,000,000	35,000,000	20,000,000	935,000,000	733,000,000	1,455,000,000	4,696,000,000	0.046132
MICHIGAN	1,250,000,000	267,000,000	39,000,000	97,000,000	580,000,000	649,000,000	730,000,000	3,612,000,000	0.035483
MINNESOTA	474,000,000	132,000,000	19,000,000	20,000,000	151,000,000	252,000,000	514,000,000	1,562,000,000	0.015345
MISSISSIPPI	268,000,000	84,000,000	59,000,000	1,000,000	125,000,000	161,000,000	0	698,000,000	0.006857
MISSOURI	1,049,000,000	4,000,000	49,000,000	272,000,000	397,000,000	505,000,000	1,025,000,000	3,211,000,000	0.031544
MONTANA	20,000,000	2,000,000	1,000,000	1,000,000	26,000,000	31,000,000	1,000,000	82,000,000	0.000806
NEBRASKA	177,000,000	0	1,000,000	1,000,000	29,000,000	68,000,000	16,000,000	292,000,000	0.002869
NEVADA	84,000,000	38,000,000	3,000,000	3,000,000	29,000,000	26,000,000	0	183,000,000	0.001798
N HAMPSHIRE	240,000,000	8,000,000	9,000,000	5,000,000	339,000,000	298,000,000	224,000,000	1,123,000,000	0.011032
N JERSEY	2,257,000,000	144,000,000	100,000,000	78,000,000	541,000,000	508,000,000	1,176,000,000	4,684,000,000	0.046014
N MEXICO	108,000,000	1,000,000	0	1,000,000	43,000,000	43,000,000	0	196,000,000	0.001925
NEW YORK	3,267,000,000	239,000,000	106,000,000	1,507,000,000	2,683,000,000	1,175,000,000	6,127,000,000	15,104,000,000	0.148364
NORTH CAROLINA	283,000,000	106,000,000	97,000,000	1,000,000	546,000,000	536,000,000	1,000,000	1,570,000,000	0.015423
NORTH DAKOTA	23,000,000	0	0	0	6,000,000	8,000,000	8,000,000	45,000,000	0.000442
OHIO	781,000,000	581,000,000	99,000,000	233,000,000	708,000,000	1,193,000,000	1,239,000,000	4,834,000,000	0.047488
OKLAHOMA	252,000,000	79,000,000	13,000,000	11,000,000	112,000,000	126,000,000	0	593,000,000	0.005825
OREGON	147,000,000	27,000,000	78,000,000	18,000,000	331,000,000	105,000,000	444,000,000	1,250,000,000	0.012083
PENNSYLVANIA	1,397,000,000	295,000,000	14,000,000	3,000,000	1,376,000,000	324,000,000	1,430,000,000	4,749,000,000	0.046653
RHODE ISLAND	132,000,000	13,000,000	1,000,000	39,000,000	187,000,000	93,000,000	316,000,000	781,000,000	0.007672
SOUTH CAROLINA	317,000,000	50,000,000	75,000,000	0	379,000,000	405,000,000	0	1,226,000,000	0.012044
SOUTH DAKOTA	67,000,000	20,000,000	1,000,000	1,000,000	4,000,000	24,000,000	24,000,000	141,000,000	0.001385
TENNESSEE	424,000,000	97,000,000	157,000,000	12,000,000	535,000,000	376,000,000	610,000,000	2,211,000,000	0.021720
TEXAS	1,663,000,000	233,000,000	225,000,000	17,000,000	722,000,000	1,285,000,000	0	4,145,000,000	0.040719
UTAH	319,000,000	73,000,000	43,000,000	0	76,000,000	56,000,000	0	567,000,000	0.005570
VERMONT	76,000,000	29,000,000	4,000,000	7,000,000	62,000,000	19,000,000	86,000,000	283,000,000	0.002780
VIRGINIA	694,000,000	66,000,000	18,000,000	2,000,000	463,000,000	226,000,000	170,000,000	1,549,000,000	0.015217
WASHINGTON	1,037,000,000	18,000,000	124,000,000	87,000,000	800,000,000	633,000,000	658,000,000	3,365,000,000	0.033057
W VIRGINIA	390,000,000	29,000,000	5,000,000	3,000,000	764,000,000	199,000,000	615,000,000	1,996,000,000	0.019608
WISCONSIN	616,000,000	33,000,000	52,000,000	7,000,000	220,000,000	710,000,000	183,000,000	1,821,000,000	0.017889
WYOMING	34,000,000	8,000,000	1,000,000	0	2,000,000	9,000,000	0	54,000,000	0.000530
A SAMOA	15,000,000	0	0	0	7,000,000	18,000,000	0	40,000,000	0.000393
GUAM	23,000,000	0	2,000,000	1,000,000	7,000,000	8,000,000	0	41,000,000	0.000403
N MARIANAS	13,000,000	1,000,000	0	0	51,000,000	17,000,000	0	82,000,000	0.000806
PUERTO RICO	394,000,000	4,000,000	26,000,000	14,000,000	1,252,000,000	335,000,000	20,000,000	2,045,000,000	0.020093
TRUST TERR	59,000,000	1,000,000	0	0	35,000,000	22,000,000	0	117,000,000	0.001149
VIRGIN ISLANDS	16,000,000	0	1,000,000	0	21,000,000	10,000,000	0	48,000,000	0.000472
								0	
	28,616,000,000	5,118,000,000	2,821,000,000	3,172,000,000	22,231,000,000	16,629,000,000	23,207,000,000	101,794,000,000	1.000000

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ELIGIBILITIES AFTER 1990

The bill amends three sections of the Act to provide consistency between programmatic aspects of title II and the funding phase-out. The bill amends section 202(a)(1) of the Act to prohibit grandfathering of the 75 percent Federal share for grants for phased or segmented projects that receive a grant award on or after October 1, 1990. Section 204(c) of the Act is amended to prohibit grandfathering of reserve capacity for phased or segmented projects that receive a grant award on or after October 1, 1990. Section 205(g)(1) of the Act is amended to extend the Administrator's authority to reserve four percent of the State's allotment through fiscal year 1994 for the purpose of making grants to States for the management of the delegated construction grant program. This is to assure that management funds will be available for any project constructed within the legal obligation period after 1990.

These amendments will affect the eligible costs of projects that receive a grant out of the 1990 allotment in 1991 or deobligated funds. The scope of the potential projects affected by these prohibitions are phased or segmented projects that receive their first Federal grant before October 1, 1984. These changes will focus the limited Federal spending authority on backlogged core treatment needs (secondary treatment, advanced treatment, inflow-infiltration correction, and new interceptors) and enable the limited Federal dollar to reach more projects in more communities.

DESIGN-BUILD PROJECTS

Section 203 of the Act is amended to provide that communities applying for construction grant assistance may enter into an agreement with the Administrator to erect treatment works under alternate "design-build" grant management procedures. This alternate management procedure allows applicants to contract for both the design and construction of treatment works, thereby avoiding several costly review and bidding requirements.

The agreement between the applicant and Administrator provides for a specified Federal contribution, start and end dates for construction, effective project management procedures, and a bond to assure performance.

The design-build approach to project management has several advantages. By bringing together the designer and the builder at the start of a project, they can work as a team to tailor construction plans and designs to the specific project and the contractor's construction methods and schedule. This results in efficiencies and savings which are not achieved in separate design and construction. In addition, by better coordination of design and construction, projects can be constructed more quickly and, therefore, at a lower cost.

Design-build project management procedures are limited to those projects which have a total cost of less than $8 million and are specified, simple treatment systems (e.g., aerated lagoons). In addition, not more than 25 percent of a State grant allocation may be used under this alternate management procedure.

INNOVATIVE AND ALTERNATIVE PROJECTS

The bill amends section 205(i) of the Act to extend through fiscal year 1990 the requirement that a percentage of allotted funds be reserved to be used to increae the Federal share for innovative and alternative projects.

The purpose of maintaining the reserve is to encourage the utilization of innovative and alternative technologies.

MARINE CSO'S AND ESTUARIES

The reported bill amends section 205 of the Act by adding a new subsection. Subsection (1) provides that the Administrator shall reserve, prior to allotment, one and a half percent of the sums authorized to be appropriated under section 207 of the Act for marine combined sewer overflow problems and estuaries. Two-thirds of the reserve, or one percent of the construction grants appropriation, shall be available for marine CSO correction where lower levels of water quality exist in marine bays and estuaries as a result of discharges by marine CSO's. The remaining one third of the reserve, or one half of one percent of the construction grants appropriation, shall be made available to supplement the funding of the newly established National Estuary Program pursuant to section 320 of the Act. Section 320 provides for the establishment of an estuarine management conference to address water quality problems in estuaries by developing and implementing comprehensive conservation and management plans. The total reserve authorized by section 205(l) is subject to the two year period of availability for obligation as provided for in section 205(d).

The estuaries of the U.S. are vital in the ecosystems which have been detrimentally affected by the municipal pollution problems of the ever increasing urban populations residing on their shores and other pollution problems such as industrial point source pollution and agricultural runoff nonpoint source pollution. Two-thirds of the reserve is focused on municipally generated pollution due to marine CSO discharges. One-third of the reserve may supplement the funds available for the National Estuarine Program.

INDIAN TRIBES

The bill amends title II of the Clean Water Act to accord Indian tribes assistance in the development and implementation of wastewater treatment facilities, including a one-year study of sewage treatment needs of Indian lands. Beginning in fiscal 1987, the section authorizes the use of up to one-half of one percent of the construction grants program for grants to Indian tribes to address unmet needs identified by the Administrator's report. This section also adds a definition of Indian tribes to the definitions contained in section 502 of the Act.

Title II of the Act is amended to direct the Administrator of the Environmental Protection Agency to conduct a study, in coordination with the Director of Indian Health Services, Department of Health and Human Services, to assess sewage treatment needs to serve Indian tribes. Additionally, this study will identify the degree to which such needs will be met through funds allotted to States

under the construction grants program, and identify any obstacles which may prevent these needs from being met. Within one year of the date of enactment of the Clean Water Act amendments of 1985, the Administrator is directed to submit such report to Congress. However, if timely, the report may be submitted as part of the 1986 Needs Survey.

The Act is further amended to make tribes eligible, beginning in fiscal 1987, for direct EPA construction grants to address unmet needs identified in the Administrator's report to Congress. The Administrator is authorized to treat Indian tribes as States to the degree necessary to allot funds for sewage treatment needs, and is authorized to waive, where necessary, the non-Federal cost-sharing requirement, consistent with the trust responsibility and relationship which exists between tribal governments and the Federal Government.

Finally, this section adds to the Act a definition of Indian tribes specifying that, for the purposes of the Clean Water Act, the Indian tribes to be covered by the provisions of this section include any Indian tribe, band, nation, or other organized group or community, including an Alaska Native village, which is recognized as eligible for the special programs and services provided by the United States. The definition does not include Alaska Native regional or village corporations, which are organized for other purposes.

STATE WATER POLLUTION CONTROL REVOLVING FUNDS

The bill adds a new title VI to the Clean Water Act to provide for the establishment of State-administered Water Pollution Control Revolving Funds (SRFs). The creation of SRFs through a program of capitalization grants to States will provide a feasible transition to State and local financing of municipal wastewater treatment facilities. The intent of title VI is to set up viable funding alternatives to the current grant mechanism. To that end, the provisions of title VI have been designed to assure the formation of financially-sound, environmentally-oriented revolving loan programs. The following major provisions and principles must be understood in examining the intent of title VI.

To complete the remaining core municipal wastewater treatment needs, funds must be dedicated as quickly as possible. This policy is implemented through sections 602(b)(4) and 602(b)(5) which require that binding loan agreements for the use of Federal funds be completed within one year of receipt of such funds, and that the projects financed with such loans comply with the eligibility and other requirements that are applicable to grant-funded projects under title II. In addition to meeting title II eligibility requirements, a State must also commit to first using its revolving fund resources in financing the construction of municipal treatment works needed to meet the 1988 municipal compliance deadline. Title VI provisions also help achieve the objective of timely compliance by allowing a municipality to proceed with its own funds to begin construction immediately and still benefit at a later date from an attractive refinancing package the SRF might offer. Thus, the shift to a loan program need not constitute impediments to compliance with the goals of the Act. On the contrary, the refi-

nancing feature of the revolving loan program would eliminate the disincentive that now exists with the grants program.

The Federal contribution of funds is premised, in part, on the creation of SRFs which will make new loans from the repayment of an initial set of loans. In addition to targeting funds to new municipal wastewater treatment projects as expeditiously as possible, the State must commit the funds in a form that will generate needed cash flows for making future loans. Section 603(b)(4) and 603(c) of title VI are intended for States to make sound loans on reasonable terms that will generate repayments. It is not the intent of the bill that States leave significant amounts of funds idle in investment accounts, nor is it the intent that the States assume any local loan through default or develop extensive nonrevenue generation agreements with municipalities. To assure sound loans and limits on future State liability, all transactions must be backed by approved local agreements as contracts with SRFs. SRFs should have authority to require adequate local user charges to address local nonperformance or default.

It is important that State managers develop adequate revenue streams from the projects initially funded by the revolving fund. Once maintenance of progress on the completion of all projects needed to meet the enforceable requirements of Act is assured States may finance other municipal wastewater needs or capital components of nonpoint source control and estuaries programs under section 319 and 320 of the Act.

AUTHORIZATION, ALLOTMENT, AWARD AND PAYMENT

Section 601 authorizes $8.4 billion in the period beginning fiscal year 1989 and ending fiscal year 1994 and provides that appropriations from the authorized amounts be allotted among the States in accordance with the same allocation formula that is used to allot title II construction grant funds. Funds allotted under a grant award in a given fiscal year must be made by the end of that fiscal year. Funds allotted to a State that have not been awarded by the end of the fiscal year that such funds became available will be reallotted among the States that have already established acceptable State Revolving Funds.

The Administrator is authorized to award a capitalization grant to a State if an agreement that meets the terms of section 602 has been reached. Payments will be made based on a schedule that a State negotiates with the Administrator and shall not be more frequent than quarterly. In developing a schedule of payments, the Administator shall take into account the loan commitments that a State Revolving Fund has made or is expected to make, the factors affecting the pace of construction within a State, the amount of funds already available but not expended by the SRF, and the timing and amount of various borrowing needs of municipalities, States and the Federal government.

Subsection (f) of section 601 details the procedures for withholding payments to a State Water Pollution Control Revolving Fund in the case of non-compliance with the provisions of title VI or the capitalization grant agreement. The Administrator would be required to notify the State of the non-compliance and describe the

necessary corrective action. If corrective action is not taken within a 60-day period following the notice, the Administrator would be authorized to withhold scheduled payments of funds to State Water Pollution Control Revolving Fund. In cases of continued non-compliance where the State had not taken corrective action within twelve months of the notice under subsection (f), then the withheld funds would be reallocated among the other States.

CAPITALIZATION GRANT AGREEMENTS WITH STATES

Under Section 602 States are required to enter into agreements with the Administrator prior to receiving the award of a capitalization grant.

A State must establish (through statute or other legal mechanism creating a legal entity of the State with the powers and limitations prescribed in this bill) a revolving fund dedicated solely to such purposes. The State must also negotiate a schedule of payments as described in section 601(e) above. Prior to receiving payments, a State must make a 15 percent matching contribution to the revolving funds. This section also enables a State to meet the 15 percent matching requirement by depositing State monies in the dedicated revolving fund during fiscal years prior to the fiscal year that Federal grant funds are received.

All funds available to the revolving fund must be committee in an expeditious and timely manner; funds provided by capitalization grants (or an amount equal to such funds), however, must be made available to loan recipients in binding loan agreements within one year of receipt of the Federal funds by the State Revolving Fund. Binding loan commitments entered into within 12 months of receipt of a Federal grant payment may also be greater than 100 percent of the amount of the Federal grant payment. Any treatment project that is financed with funds directly made available by capitalization grants, prior to fiscal year 1985, will have to meet the same requirements that the project would have had to have met if it had received a grant under Title II. The applicable requirements of Title II are those that refer to projects, and do not include programmatic features of the Title II construction grants program such as Federal grant shares, allotments and set-asides, and authorizations. The requirements of the Clean Water Act applicable to grant-funding projects include provisions of sections 201, 203(a), 204, 211, 212, 215, 217, 218, 219, and 511(c) and 513 of the Clean Water Act. As such, the eligibility restrictions set forth in the 1981 Amendments would apply to treatment projects financed through funds directly made available by Federal capitalization grants. A State must further agree to first use funds available in the State Revolving Fund to assure maintenance of progress in completing municipal treatment works needed to comply with enforceable requirements of the Act, including the 1988 municipal compliance deadline.

Finally, the State must agree to establish loan requirements, regulations, fiscal controls and procedures, accounting and auditing methods that will comply with applicable State law, and generally accepted government accounting standards. On an annual basis,

the State will make a report of its intended use of the funds and its actual use of funds for the previous year.

STATE WATER POLLUTION CONTROL REVOLVING FUNDS

Section 603 provides that a State must establish a Water Pollution Control Revolving Fund, which must be administered by an instrumentality of the State, to be eligible for an award of a capitalization grant. The State must provide the SRF with powers and impose limitations on the Revolving Fund; some of the powers and limitations are specified in the remaining subsections of section 603.

Section 603 also provides that SRFs be maintained and credited with repayments so that the fund balance shall be available in perpetuity. The Revolving Fund is dedicated for only two purposes: one, to provide financial assistance for the construction of publicly owned treatment works as defined in Section 212(2) of the Act; and two, to provide financial assistance (except from funds made directly available to the SRF in the capitalization grant) for the implementation of projects and programs established under sections 319 (Nonpoint Source Pollution Control Program) and 320 (National Estuarine Program). In both cases, the financial assistance must be for capital projects that are capable of enabling the State to establish a revenue stream to support repayment of the financial assistance. Subsection (c)(3) requires that a loan recipient establish a dedicated source of revenue to repay the loan. In providing for the direct implementation of nonprofit pollution control and estuaries protection programs, States may make funds available to responsible parties including municipalities, intermunicipal organizations, interstate organizations, State agencies, and private organizations and individuals. In providing financial assistance to any such parties, the State shall comply with all limitations specified in the Act.

The SRF must be maintained through repayments in perpetuity. As provided in Section 603(b), loan repayments may be credited to debt service accounts within the Water Pollution Control Revolving Fund. The dedicated purpose of the SRF and the receipt of loan repayments must maintain the financial integrity of the Fund so that the Fund balance will be available in perpetuity.

Subsection (c) of section 603 provides the Revolving Fund with the authority to make loans, however certain conditions are placed on the Revolving Fund's loan making authority. These conditions are intended to maintain the financial integrity of the SRF without hampering the State's flexibility to use the Fund to address the varied needs of its communities. The interest rate cannot exceed market rate, though it may be zero and the terms shall not exceed 20 years; annual principal payments must be fully amortized not later than 20 years after project completion; the loan recipient must establish a dedicated source of revenue for repayment of the loan; and SRFs must be credited with all repayments of principal and interest on all loans.

The State Revolving Fund may buy or refinance debt obligations of local communities which were incurred for construction of publicly owned treatment works after March 7, 1985. The purpose of this provision is to encourage municipalities to proceed with con-

struction with their own means of interim financing in advance of availability of a loan from the revolving fund, by offering municipalities the prospect of project refinancing at reasonably better financial terms at a later date. Thus, progress towards meeting the 1988 municipal compliance deadline will be aided.

Subsection (d)(2) of section 603 would allow a State Revolving Fund to guarantee, or purchase insurance for, local debt obligations. A similar provision in subsection (d)(4) would establish loan guarantees for a loan pool operated by a large intermunicipal agency. Under these provisions, a State Revolving Fund could reduce costs of borrowing for a community, but the State Revolving Fund would also assume certain risks of default on the guaranteed loans or debt obligations. In keeping with the principle that the revolving funds should generate positive future cash flows, the use of these mechanisms should be limited to a small portion of the revolving fund's current assets.

Subsection (d)(3) of section 603 would allow a State to use the State Revolving Fund and its chief assets (future revenues from loan repayments) as a basis for issuing bonds for further revolving fund activity. Under such an arrangement, a State would be able to leverage outstanding loans made from an initial set of capitalization grants, and thus make available significant amounts of money much sooner than would otherwise have been possible. Bonds may be issued by an instrumentality of the State, the State agency responsible for administering the Water Pollution Control Revolving Fund, or an interstate agency to which two or more States have given such responsibility.

Subsections (d)(5) and (d)(6) of section 603 would allow the State Revolving Fund to earn interest on fund accounts and use up to 4 percent of amounts available for administrative purposes. However, where appropriate the Administrator should take actions needed to assure that the use of this mechanism does not undermine the fiscal integrity of the SRFs.

AUDITS, REPORTS, AND FISCAL CONTROLS

Section 604 requires fiscal controls and accounting procedures be established for SRFs. The State is required to establish fiscal controls and procedures to assure proper accounting for payment periods, disbursements, and fund balances. All funds must be accounted for, including capitalization grants, State matching grant, and loan repayments.

The Administrator shall conduct, or the State shall have an entity independent of the State conduct, an audit, not less than annually, of the operations of each SRF. The audit, must be conducted in accordance with the Comptroller General's standards. The Administrator shall determine the time for completion and the manner of the audit. The requirement that the State have the audit conducted by an entity independent of the State would be satisfied if a State agency has been certified to carry out the audit by the Comptroller General or the State demonstrates to the satisfaction of the Administrator that it is fiscally unable to make a contract with an independent entity.

Subsection (c) of section 604 requires each State to prepare a plan for the intended uses of amounts available in the Revolving Fund. The intended use plan may be adopted from the priority systems and lists developed under section 216 of the Act for construction grant projects. The State may also consider other information on the extent and nature of water pollution problems. The State must provide an opportunity for public comment on the use of the funds. The intended use plan must include: the long and short term goals and objectives of the Revolving Fund; description of project categories that will receive financial assistance; discharge requirements under Title III and IV that will be met by funded projects; the terms of financial assistance granted; and the communities that will receive financial assistance; assurances for meeting the requirements that the Fund make loan commitments consistent with section 602(b)(4) and (5); and a description of the criteria and method established for the distribution of funds. The report will help assist States' fiscal and environmental planning in order to achieve the goals of the Act.

Subsection (d) of section 604 requires the State to prepare a report to the Administrator describing how the State implemented its intended use plan prepared pursuant to subsection (c). This report is to be prepared annually and the first report must be provided in the first fiscal year after receipt of payments. The report shall include identification of loan recipients, amounts, and terms.

Subsection (e) of Section 604 requires the Administrator to conduct an annual review of the intended use plan and the annual report to determine whether the State is complying with the requirements of this Title. Subsection (e) also requires that a State or loan recipient make records available to the Administrator, after reasonable notice, to help in making a determination.

STATE OPTION TO USE TITLE II FUNDS

The bill amends the Clean Water Act by adding a new subsection (m) to Section 205. This section would provide States with the option of using all or a portion of their funds available for obligation under Title II for capitalization grants for State Revolving Funds under Title VI. This provision is designed to encourage those States that have appropriate funding entitles in place to proceed with capitalization of their State Revolving Funds as soon as possible, provided the SRF is established in compliance with the requirements of title VI.

Funds available for obligation to a State under title II include a State's allotted share of a current year's appropriations, any unobligated carryover funds from the previous year's allotment, and funds made available through grant decreases or deobligations. The Governor of a State would be required to provide a notice of intent to use all or part of these funds in a timely fashion to the Administrator. The first notice would have to be provided within thirty days of enactment of the Clean Water Act Amendments of 1985. All subsequent notices would have to filed with the Administrator at least 90 days prior to the beginning of the fiscal year. Since the State has an option, at its discretion, to use any portion of the funds available for obligation within that State, the State may

choose to use any unobligated funds, including unobligated set-aside funds, as a basis for early or additional capitalization of State Revolving Funds under title VI.

A State is not required to completely convert its program to a loan program under this option. It could, for example, reserve a portion of its funds for grants to cities which need funds to meet the 1988 deadline while shifting the remainder to the SRF. Each State may choose to address these circumstances differently.

REPORT TO CONGRESS

The bill amends section 516 of the Act to provide that the Administrator submit a report to Congress on the financial status and operations of the Water Pollution Control Revolving Funds. The purpose of this report is to assess the effectiveness of SRFs by reviewing the financial viability of the Funds and the use of loans in accomplishing the pollution control goals of the Act, and comparing the impacts of loans to the impacts of grants.

HEARINGS

The Subcommittee on Environmental Pollution held three days of hearings (March 26, 27, and 28, 1985) at which time testimony was taken from representatives of the administration, environmental and industry groups, State and local officials, financial experts, and other interested parties.

ROLLCALL VOTERS

Section 7(b) of rule XXVI of the Standing Rules of the Senate and the rules of the Committee on Environment and Public Works require that any rollcall votes taken during consideration of this bill be announced in this report.

There were two rollcall votes taken during consideration of this bill. Each of those votes was publicly announced during the open meetings of the Committee for marking up this legislation. The tabulation of those votes is available in the Committee's files.

A third rollcall vote resulted in a 13–2 vote to report the bill. Voting in favor of reporting the bill were Senators Abdnor, Baucus, Bentsen, Burdick, Chafee, Domenici, Hart, Humphrey, Lautenberg, Mitchell, Simpson, Symms, and Stafford. Voting in the negative were Senators Durenberger and Moynihan.

EVALUATION OF REGULATORY IMPACT

In compliance with section 11(b) of Rule XXVI of the Standing Rules of the Senate, the Committee makes the following evaluation of the regulatory impact of the reported bill.

The reported bill requires effluent limitations to be established to protect the nation's waters from additional degradation due to toxic pollutants. This is not new authority in the Clean Water Act but simply augments authority that has existed since 1972. The reported bill also requires State develop nonpoint source pollution management programs to be reviewed and approved by the Administrator of EPA. This provision is consistent with existing provisions under the Clean Water Act to control pollution of the Na-

tion's waters. The reported bill also authorizes grants to States for the establishment of water pollution control revolving loan funds for the construction of publicly owned treatment works. To qualify for funds, States must enter into agreements with the Administrator of EPA. It is not expected that there will be any new regulatory burdens created by the reported bill, beyond that currently authorized by the Act.

COST OF LEGISLATION

Section 403 of the Congressional Budget and Impoundment Control Act requires each bill to contain a statement of the cost of such bill prepared by the Congressional Budget Office. That report follows:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, May 14, 1985.

Hon ROBERT T. STAFFORD,
Chairman, Committee on Environment and Public Works, U.S. Senate, Dirksen Senate Office Building, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the attached cost estimate for the Clean Water Act Amendments of 1985.

If you wish further details on this estimate, we will be pleased to provide them.

With best wishes,

Sincerely,

JAMES BLUM
(For Rudolph G. Penner).

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE, MAY 14, 1985

1. Bill number: Not yet assigned.
2. Bill title: Clean Water Act Amendments of 1985.
3. Bill status: As ordered reported by the Senate Committee on Environment and Public Works, May 1, 1985.
4. Bill purpose: This bill would reauthorize water quality programs administered by the Environmental Protection Agency (EPA). The construction grants program would be reauthorized at a level of $2.4 billion a year through fiscal year 1988, and $1.2 billion annually for fiscal years 1989 and 1990.

Authorizations for grants aiding states in capitalizing revolving funds would begin at a level of $1.2 billion a year in 1989 and 1990 with the authorization level dropping to $600 million for 1994.

Finally, this bill would require the EPA to charge fees to reflect the agency's cost of processing alternative requirement applications for national effluent limitation guidelines or pretreatment standards. Sums collected would be deposited in the Treasury as miscellaneous receipts.

5. Estimated cost to the Federal Government:

[By fiscal years, in millions of dollars]

	1986	1987	1988	1989	1990
Revenues	4	4	3	3	2
Authorization level	2,879	2,909	2,939	2,796	2,485
Estimated outlays	267	694	1,479	3,439	3,228

The costs of this bill fall within budget function 300.

Additional outlays of about $5 billion would occur after fiscal year 1990 for the construction grants program.

Basis of estimate: For the purposes of this estimate, it is assumed that this bill will be enacted during fiscal year 1985 and that the full sums authorized will be appropriated prior to the beginning of each fiscal year. Outlays have been estimated on the basis of historical spending patterns. Revenues arising from the deposit of application fees into the general fund have been estimated on the basis of information obtained from the EPA.

6. Estimated cost to State and local governments: CBO has not completed its estimate of the costs to state and local governments. This estimate will be transmitted separately at a later date.

7. Estimate comparison: None.

8. Previous CBO estimate: None.

9. Estimate prepared by: Deborah Reis.

10. Estimate approved by: C.G. Nuckols, for James L. Blum, Assistant Director for Budget Analysis.

ADDITIONAL VIEWS OF MR. MOYNIHAN AND MR. DURENBERGER

The Committee approved a change in the allocation of sewage treatment construction grants that is both unwise and unfair. Under the new formula, grants to eighteen States would be reduced. Most of these losing States are populous, urban States in the East and Midwest. Every State bordering on the Great Lakes would experience at least a 19 percent reduction in funding.

This is especially unfortunate when one considers that many of the same States have historically been neglected by Federal water programs generally. For example, between 1956 and 1980, only 1.2 percent of the total water resources spending by the Corps of Engineers, Bureau of Reclamation, Tennessee Valley Authority, and Soil Conservation Service went to New York. The Environmental Protection Agency's construction grants program has been more equitable, but equity would be threatened by the new formula.

The new formula is designed to transfer grant resources from populous States to small States and from the East and Great Lakes regions to growing areas in the South and West. Although ostensibly based on needs, it has numerous flaws.

The formula uses so-called "eligible needs" as a basis for allocating funds. No weight is given to combined sewer overflows, a major cause of water quality degradation in older urban areas. In 1981 Congress narrowed the list of project categories eligible for Federal funding but wisely gave governors the discretion to use up to 20 percent of a state's allotment for the correction of combined sewer overflows. It makes no sense to use Federal funds for this vital type of work but to ignore the need in the allocation of the funds.

Equally objectionable is the arbitrary classification of states into three groups. Funding would be distributed to each group in a manner designed to favor small states with relatively low levels of need. One group, for example, consists of the 13 states with the lowest estimated needs. This group collectively accounts for 3.7 percent of the eligible needs but would receive 8.5 percent of the grant funding.

The arbitrary nature of the formula is further revealed by the distribution of funds within each group of States. A different mathematical algorithm is used for each group. For some States, the share of funding is determined by the cube of the logarithm of the eligible needs. Why not the square or the fourth power of the logarithm? It would make every bit as much sense—which is to say, none.

This radical change in the allocation of grant funds would have disproportionate effects on major bodies of water. Most importantly, the change would significantly hinder our efforts to improve water quality in the Great Lakes. In the Great Lakes Water Qual-

ity Agreement of 1978, the United States joined Canada in a commitment to control major sources of water pollution. The agreement includes specific goals for a wide range of pollutants and sources. For example, the concentration of phosphorous in sewage treatment plant effluent must not exceed one milligram per liter. Equally important, the agreement requires each nation to provide adequate funding to meet the water quality goals.

A General Accounting Office study in 1982 found that the United States is far from meeting its commitments under the 1978 agreement. According to the GAO, the U.S. has lagged considerably behind schedule in providing adequate municipal wastewater treatment in the Great Lakes basin. Furthermore, little progress has been made toward controlling combined sewer overflows. As a result, eutrophication and toxic chemical pollution continue to plaque the lakes. Progress would only be further slowed by the proposed new allocation formula, which reduces grants to the Great Lakes states by $175 million annually.

Similarly, virtually the entire drainage area of Chesapeake Bay lies in states that would lose funding. The Committee recognized the unique character of the Great Lakes and Chesapeake Bay by authorizing in this bill modest programs to improve the management of those resources. The damage done by the new formula would more than offset the benefits of these programs.

A radical change in the allocation of construction grants is unwarranted. If a change must be made, large states and particular regions should not be unfairly penalized.

DAVE DURENBERGER.
DANIEL PATRICK MOYNIHAN.

CHANGES IN EXISTING LAW

In compliance with section 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill as reported are shown as follows: Existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman:

FEDERAL WATER POLLUTION CONTROL ACT, AS AMENDED

(33 U.S.C. 466 et seq.)

AN ACT To provide for water pollution control activities in the Public Health Service of the Federal Security Agency and in the Federal Works Agency, and for other purposes.

TITLE I—RESEARCH AND RELATED PROGRAMS

* * * * * * *

RESEARCH, INVESTIGATIONS, TRAINING, AND INFORMATION

Sec. 104. (a) * * *

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(q)(1) * * *

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(4) Notwithstanding section 205(d) of this Act, from funds that are set aside by States under section 205(i) of this Act and not obligated by the end of the twenty-four month period provided under section 205(d), the Administrator shall award a grant under this section in the amount of $1,000,000 or such unobligated amount, whichever is less, in each year, to support a National Clearinghouse to collect and disseminate information on small flows and innovative or alternative technologies, consistent with paragraph (3).

* * * * * * *

(u) There is authorized to be appropriated (1) not to exceed $100,000,000 per fiscal year for the fiscal year ending June 30, 1973, the fiscal year ending June 30, 1974, and the fiscal year ending June 30, 1975, and not to exceed $14,039,000 for the fiscal year ending September 30, 1980, and not to exceed $20,697,000 for the fiscal year ending September 30, 1981, and not to exceed $22,770,000 for the fiscal year ending September 30, 1982, *and not to exceed $22,770,000 per fiscal year for the fiscal years ending September 30, 1986, September 30, 1987, September 30, 1988, and September 30, 1989,* for carrying out the provisions of this section, other than subsections (g) (1) and (2), (p), (r), and (t), except that such authorizations are not for any research, development, or demonstration activity pursuant to such provisions; (2) not to exceed

$7,500,000 for fiscal years 1973, 1974, and 1975, $2,000,000 for fiscal year 1977, $3,000,000 for fiscal year 1978, $3,000,000 for fiscal year 1979, $3,000,000 for fiscal year 1980, $3,000,000 for fiscal year 1981, and $3,000,000 for fiscal year 1982, *and not to exceed $3,000,000 per fiscal year for the fiscal years ending September 30, 1986, September 30, 1987, September 30, 1988, and September 30, 1989,* for carrying out the provisions of subsection (g)(1); (3) not to exceed $2,500,000 for fiscal year 1973, 1974, and 1975, $1,000,000 for fiscal year 1977, $1,500,000 for fiscal year 1978, $1,500,000 for fiscal year 1979, $1,500,000 for fiscal year 1980, $1,500,000 for fiscal year 1981, [and] $1,500,000 for fiscal year 1982, *and not to exceed $1,500,000 per fiscal year for the fiscal years ending September 30, 1986, September 30, 1987, September 30, 1988, and September 30, 1989,* for carrying out the provisions of subsection (g)(2); (4) not to exceed $10,000,000 for each of the fiscal years ending June 30, 1973, June 30, 1974, and June 30, 1975, for carrying out the provisions of subsection (p); (5) not to exceed $15,000,000 per fiscal year for the fiscal years ending June 30, 1973, June 30, 1974, and June 30, 1975, for carrying out the provisions of subsection (r); and (6) not to exceed $10,000,000 per fiscal year for the fiscal years ending June 30, 1973, June 30, 1974, and June 30, 1975, for carrying out the provisions of subsection (t).

GRANTS FOR POLLUTION CONTROL PROGRAMS

SEC. 106. (a) There are hereby authorized to be appropriated the following sums, to remain available until expended, to carry out the purposes of this section—

(1) $60,000,000 for the fiscal year ending June 30, 1973; and

(2) $75,000,000 for the fiscal year ending June 30, 1974 and the fiscal year ending June 30, 1975, $100,000,000 per fiscal year for the fiscal years 1977, 1978, 1979, and 1980 $75,000,000 per fiscal year for the fiscal years 1981, [and] 1982, *1986, 1987, 1988, and 1989*

for grants to States and to interstate agencies to assist them in administering programs for the prevention, reduction, and elimination of pollution, including enforcement directly or through appropriate State law enforcement officers or agencies.

DEFINITIONS AND AUTHORIZATIONS

SEC. 112. (a) * * *

* * * * * * *

(c) There are authorized to be appropriated $25,000,000 per fiscal year for the fiscal years ending June 30, 1973, June 30, 1974, and June 30, 1975, $6,000,000 for the fiscal year ending September 30, 1977, $7,000,000 for the fiscal year ending September 30, 1978, $7,000,000 for the fiscal year ending September 30, 1979, $7,000,000 for the fiscal year ending September 30, 1980, $7,000,000 for the fiscal year ending September 30, 1981, [and] $7,000,000 for the fiscal year ending September 30, 1982, *and $7,000,000 per fiscal year for the fiscal years ending September 30, 1986, September 30,*

1987, September 30, 1988, and September 30, 1989, to carry out sections 109 through 112 of this Act.

* * * * * * *

CHESAPEAKE BAY

SEC. 117. (a) The Administrator shall continue the Chesapeake Bay Program and shall establish and maintain in the Environmental Protection Agency an Office, Division, or Branch of Chesapeake Bay Programs to—

(1) collect and make available, through the publications and other appropriate means, the results of and other information pertaining to research and other activities that address the environmental quality of the Chesapeake Bay (hereinafter "the Bay");

(2) coordinate all Federal research projects pertaining to the Bay;

(3) conduct research to determine the impact or sediment deposition in the Bay and to identify the sources, rates, routes, and distribution patterns of such sediment deposition; and

(4) conduct research on the impact of natural and man-induced environmental changes on the living resources of the Bay and the relationships between such changes. Particular emphasis shall be placed on researching the impact of pollutant loadings of nutrients, chlorine, acid precipitation, dissolved oxygen, and toxic pollutants, including organic chemicals and heavy metals. Special attention shall be given to the impact of such changes on the striped bass.

(b)(1) The Administrator shall, at the request of the Governor of a State affected by the interstate management plan developed pursuant to the Chesapeake Bay Program (hereinafter "the plan"), make a grant for the purpose of implementing the management mechanisms contained in the plan if such State has, within one year after the date of enactment of the Clean Water Act Amendments of 1985, approved and committed to implement all or substantially all aspects of the plan. Payments for such purpose may be made to the States as hereinafter provided, subject to such terms and conditions as the Administrator considers appropriate.

(2) A State or combination of States may elect to avail itself of the benefits of this subsection by submitting to the Administrator a comprehensive proposal to implement management mechanisms contained in the plan which shall include (A) a description of proposed abatement actions which the State commits to take within a specified time period to reduce pollution in the Bay and to meet applicable water quality standards, and (B) the estimated cost of the abatement actions proposed to be taken during the next fiscal year. If the Administrator finds that such proposal is consistent with the national policies set forth in section 101(a) of this Act and will contribute to the achievement of the national goals set forth in section 101(a) of this Act he shall approve such proposal and shall finance the costs of implementing segments of such proposal; except that Federal grants under this subsection shall not exceed 55 per centum of the costs of implementing the plan in any fiscal year and shall be

made on condition that non-Federal sources provide the remainder of the cost of implementing the plan during such fiscal year.

(3) Administrative costs in the form of salaries, overhead or indirect costs for services provided and charged against programs or projects supported by funds made available under this subsection shall not exceed in any one fiscal year 10 per centum of the annual Federal grant made to a State under this subsection.

(c) Any State or combination of States that receives a grant under subsection (b) shall, within eighteen months after the date of receipt of a Federal grant under subsection (b) and biennially thereafter, report in conjunction with the Administrator to the Congress on progress made in implementing the interstate management plan developed pursuant to the Chesapeake Bay Program.

(d) There are hereby authorized to be appropriated the following sums, to remain available until expended, to carry out the purposes of this section:

(1) $3,000,000 per fiscal year for the fiscal years ending September 30, 1986, September 30, 1987, and September 30, 1988, to carry out subsection (a); and

(2) $10,000,000 per fiscal year for the fiscal years ending September 30, 1986, September 30, 1987, and September 30, 1988, to carry out subsection (b).

GREAT LAKES

SEC. 118. (a) DEFINITIONS.—For the purposes of this section, the term—

(1) "Agency" means the Environmental Protection Agency;

(2) "Great Lakes" means Lake Ontario, Lake Erie, Lake Huron (including Lake St. Clair), Lake Michigan, and Lake Superior, and the connecting channels (Saint Mary's River, Saint Clair River, Detroit River, Niagara River, and Saint Lawrence River to the Canadian Border);

(3) "Great Lakes System" means all the streams, rivers, lakes, and other bodies of water within the drainage basin of the Great Lakes:

(4) "Program Office" means the Great Lakes National Program Office established by this section.

(b) GREAT LAKES NATIONAL PROGRAM OFFICE.—The Great Lakes National Program Office (previously established by the Administrator) is hereby established within the Agency. The Program Office shall be headed by a Director who, by reason of management experience and technical expertise relating to the Great Lakes, is highly qualified to direct the development of programs and plans on a variety of Great Lakes issues. The Great Lakes National Program Office shall be located in a Great Lakes State.

(c) GREAT LAKES MANAGEMENT.— The Program Office shall—

(A) in cooperation with appropriation Federal, State, tribal, and international agencies, develop and implement specific action plans to carry out the responsibilities of the United States under the Great Lake Water Quality Agreement of 1978;

(B) establish a Great Lakes system-wide surveillance network to monitor the water quality of the Great Lakes, with specific emphasis on the monitoring of toxic pollutants; and

(C) serve as the liaison with, and provide information to, the Canadian members of the International Joint Commission and the Canadian counterpart to the Agency.

(2) The Program Office shall develop, in consultation with the states, a five-year plan and program for reducing the amount of nutrients introduced into the Great Lakes. Such program shall incorporate any management program for reducing nutrient runoff from nonpoint sources established under section 319 of this Act and shall include a program for monitoring nutrient runoff into, and ambient levels in, the Great Lakes.

(3) The Program Office shall carry out a five year study and demonstration projects relating to the control and removal of toxic pollutants in the Great Lakes, with emphasis on the removal of toxic pollutants from bottom sediments.

(4) To the extent practicable, the Agency's annual budget submission to Congress, shall include a funding request for the Program Office as a separate budget line item.

(5) Within ninety days after the end of each fiscal year, the Administrator shall submit to the Congress a comprehensive report which——

(A) describes the achievements in the preceding fiscal year in implementing such agreement and shows by categories (including judicial enforcement, research, State cooperative efforts, and general administration) initiatives in such preceding fiscal year;

(B) describes the progress made in such preceding fiscal year in implementing the system of surveillance of the water quality in the Great Lakes, with particular reference to toxic pollutants;

(C) describes the long-term prospects for improving the condition of the Great Lakes; and

(D) provides a comprehensive assessment of the planned efforts to be pursued in the succeeding fiscal year for implementing the Great Lakes Water Quality Agreement of 1978. The assessment shall show by categories the amount anticipated to be expended on Great Lakes water quality initiatives in the fiscal year to which the assessment relates. The assessment shall also include a report of current programs administered by other Federal agencies which make available resources to the Great Lakes management efforts.

(d) INTERAGENCY COOPERATION.—The head of each department, agency, or other instrumentality of the Federal Government which is engaged in, is concerned with, or has authority over programs relating to research, monitoring, and planning to maintain, enhance, preserve, or rehabilitate the environmental quality and natural resources of the Great Lakes, including the Chief of Engineers of the Army, the Chief of the Soil Conservation Service, the Commandant of the Coast Guard, the Director of the Fish amd Wildlife Service, and the Administrator of the National Oceanic and Atmospheric Administration shall submit an annual report to the Administrator with respect to the activities of that agency or office affecting compliance with the Great Lakes Water Quality Agreement of 1978.

(e) RELATIONSHIP TO EXISTING FEDERAL AND STATE LAWS AND INTERNATIONAL TREATIES.—Nothing contained in this section shall be construed to affect the jurisdiction, powers, or prerogatives of any

department, agency, or officer of the Federal Government or of any State government, or of any tribe, nor any powers, jurisdiction, or prerogatives of international bodies created by treaty with authority relating to the Great Lakes.

(f) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated for the Great Lakes National Program Office for the purposes of carrying out this section not to exceed $10,000,000 per fiscal year for the fiscal years 1986, 1987, 1988, 1989, and 1990. Of such amounts——

(1) $700,000 in each fiscal year shall be used for the program of nutrient monitoring; and

(2) $5,000,000 in each fiscal year shall be used for demonstration projects of the feasibility of controlling and removing toxic pollutants.

TITLE II—GRANTS FOR CONSTRUCTION OF TREATMENT WORKS

* * * * * * *

FEDERAL SHARE

SEC. 202. (a)(1) The amount of any grant for treatment works made under this Act from funds authorized for any fiscal year begining after June 30, 1971 and ending before October 1, 1984, shall be 75 per centum of the cost of construction thereof (as approved by the Administrator), and for any fiscal year beginning on or after October 1, 1984, shall be 55 per centum of the cost of construction thereof (as approved by the Administrator) unless modified to a lower percentage rate uniform throughout a State by the Governor of that State with the concurrence of the Administrator. Within ninety days after the enactment of this sentence the Administrator shall issue guidelines for concurrence in any such modification, which shall provide for the consideration of the unobligated balance of sums allocated to the State under section 205 of this Act, the need for assistance under this title in such State, and the availability of State grant assistance to replace the Federal share reduced by such modification. The payment of any such reduced Federal share shall not constitute an obligation on the part of the United States or a claim on the part of any State or grantee to reimbursement for the portion of the Federal share reduced in any such State. Any grant (other than for reimbursement) made prior to the date of enactment of the Federal Water Pollution Control Act Amendments of 1972 from any funds authorized for any fiscal year beginning after June 30, 1971, shall, upon the request of the applicant, be increased to the applicable percentage under this section. Notwithstanding the first sentence of this paragraph, in any case where a primary, secondary, or advanced waste treatment facility or its related interceptors or a project for inflitration-in-flow correction has received a grant for erection, building, acquisition, alteration, remodeling, improvement, extension, or correction before October 1, 1984, all segments and phases of such facility, interceptors and project for infiltration-in-flow correction shall be eligible for grants at 75 per centum of the cost of construction thereof[.], *for any such grants made before October 1, 1990.*

PLANS, SPECIFICATIONS, ESTIMATES, AND PAYMENTS

SEC. 203. (a) * * *

* * * * * * *

(f)(1) An applicant from a State allowing use of this subsection who proposes to construct waste water treatment works may enter into an agreement with the Administrator under this subsection providing for the preparation of construction plans and specifications and the erection of such treatment works, in lieu of proceeding under the other provisions of this section.

(2) Agreements under this subsection shall be limited to projects which are, under an approved facility plan.

(A) treatment works that have an estimated total cost of $8,000,000 or less; and

(B) any of the following types of waste water treatment systems: aerated lagoons, trickling filters, stabilization ponds, land application systems, sand filters, and subsurface disposal systems.

(3) An agreement entered into under this subsection shall—

(A) set forth an amount agreed to as the maximum Federal contribution to the project, based upon a competitively bid document of basic design data and applicable standard construction specifications and a determination of the federally eligible costs of the project at the applicable Federal share under section 202 of this Act;

(B) set forth dates for the start and completion of construction of the treatment works by the applicant and a schedule of payments of the Fedeal contribution to the project;

(C) contain assurances by the applicant that (i) engineering and management assistance will be provided to manage the project; (ii) the proposed treatment works will be an operable unit and will meet all the requirements of this title; and (iii) not later than one year after the date specified as the date of completion of construction of the treatment works, the treatment works will be operating so as to meet the requirements of any applicable permit for such treatment works under section 402 of this Act;

(D) require the applicant to obtain a bond from the contractor in an amount determined necessary by the Administrator to protect the Federal interest in the project; and

(E) contain such other terms and conditions as are necessary to assure compliance with this title (except as provided in paragraph (4) of this subsection).

(4) Subsections (a), (b), and (c) of this section shall not apply to grants made pursuant to this subsection.

(5) The Administrator shall reserve a portion of the grant to assure contract compliance until final project approval as defined by the Administrator. If the amount agreed to under paragraph (3)(A) exceeds the cost of designing and constructing the treatment works, the Administrator shall reallot the amount of the excess to the State in which such treatment works are located for the fiscal year in which such audit is completed.

(6) Not more than 25 percent of the amount allotted to a State for any fiscal year under section 205 of this Act shall be obligated for grants pursuant to this subsection.

(7) The Administrator will determine an allowance for facilities planning for projects constructed under this subsection in accordance with section 201(l).

(8) In any case in which the recipient of a grant made pursuant to this subsection does not comply with the terms of the agreement entered into under paragraph (3), the Administrator is authorized to take such action as may be necessary to recover the appropriate amount of the Federal contribution to the project.

(9) A recipient of a grant made pursuant to this subsection shall not be eligible for any other grants under this title.

LIMITATIONS AND CONDITIONS

SEC. 204. (a) * * *

* * * * * * * *

(c) The next to the last sentence of paragraph (5) of subsection (a) of this section shall not apply in any case where a primary, secondary, or advanced waste treatment facility or its related interceptors has received a grant for erection, building, acquisition, alteration, remodeling, improvement, or extension before October 1, 1984, and all segments and phases of such facility and interceptors *awarded a grant before October 1, 1990,* shall be funded based on a 20-year reserve capacity in the case of such facility and a 20-year reserve capacity in the case of such interceptors, except that, if a grant for such interceptors has been approved prior to the date of enactment of the Municipal Wastewater Treatment Construction Grant Amendments of 1981, such interceptors shall be funded based on the approved reserve capacity not to exceed 40 years.

ALLOTMENT

SEC. 205. (a) * * *

* * * * * * *

(c)(1) * * *

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(3) Sums authorized to be appropriated pursuant to section 207 for the fiscal year 1986, 1987, 1988, 1989, and 1990 shall be allotted for each such year by the Administrator not later than the tenth day which begins after the date of enactment of the Clean Water Act Amendments of 1985. Sums authorized for such fiscal years shall be allotted in accordance with the following table:

States:	
Alabama	*0.012500*
Alaska	*.007563*
Arizona	*.012500*
Arkansas	*.011714*
California	*.058321*
Colorado	*.010503*
Connecticut	*.012500*
Delaware	*.055801*
District of Columbia	*.009172*
Florida	*.045 31*

Georgia	.014570
Hawaii	.007440
Idaho	.007272
Illinois	.036881
Indiana	.019653
Iowa	.012672
Kansas	.012337
Kentucky	.015044
Louisiana	.014380
Maine	.009772
Maryland	.019722
Massachusetts	.036195
Michigan	.035063
Minnesota	.014988
Mississippi	.012500
Missouri	.025422
Montana	.005411
Nebraska	.007467
Nevada	.006805
New Hampshire	.012500
New Jersey	.048867
New Mexico	.006814
New York	.090478
North Carolina	.016168
North Dakota	.004658
Ohio	.045906
Oklahoma	.012223
Oregon	.011794
Pennsylvania	.032302
Rhode Island	.007428
South Carolina	.013399
South Dakota	.006400
Tennessee	.016674
Texas	.053882
Utah	.012486
Vermont	.006581
Virginia	.016689
Washington	.028665
West Virginia	.012712
Wisconsin	.022322
Wyoming	.005359
Samoa	.000732
Guam	.000567
Northern Marianas	.000533
Puerto Rico	.012640
Pacific Trust Territories	.001409
Virgin Islands	.000464

* * * * * * *

(e) For the fiscal years 1978 [, 1979, 1980, 1981, 1982, 1983, 1984, and 1985,] *through 1994,* no State shall receive less than one-half of 1 per centum of the total allotment under subsection (c) of this section, except that in the case of Guam, Virgin Islands, American Samoa, and the Trust Territories not more than thirty-three one-hundredths of 1 per centum in the aggregate shall be allotted to all four of these jurisdictions. For the purpose of carrying out this subsection there are authorized to be appropriated, subject to such amounts as are provided in appropriation Acts, not to exceed $75,000,000 for each of fiscal years 1978 [, 1979, 1980, 1981, 1982, 1983, 1984, and 1985.] *through 1984.* If for any fiscal year the amount appropriated under authority of this subsection is less than the amount necessary to carry out this subsection the amount each State receives under this subsection for such year shall bear the same ratio to the amount such State would have received under this subsection in such year if the amount necessary to carry it out had

been appropriated as the amount appropriated for such year bears to the amount necessary to carry out this subsection for such year.

* * * * * * *

(g)(1) The Administrator is authorized to reserve each fiscal year not to exceed 2 per centum of the amount authorized under section 207 of this title for purposes of the allotment made to each State under this section on or after October 1, 1977, except in the case of any fiscal year beginning on or after October 1, 1981, and ending before [October 1, 1985.] *October 1, 1994,* in which case the percentage authorized to be reserved shall not exceed 4 per centum, or $400,000, whichever amount is the greater. Sums so reserved shall be available for making grants to such State under paragraph (2) of this subsection for the same period as sums are available from such allotment under subsection (d) of this section, and any such grant shall be available for obligation only during such period. Any grant made from sums reserved under this subsection which has not been obligated by the end of the period for which available shall be added to the amount last allotted to such State under this section and shall be immediately available for obligation in the same manner and to the same extent as such last allotment. Sums authorized to be reserved by this paragraph shall be in addition to and not in lieu of any other funds which may be authorized to carry out this subsection.

* * * * * * *

[(i) Not less than one-half of one per centum of funds allotted to a State for each of the fiscal years ending September 30, 1979, September 30, 1980, September 30, 1981, September 30, 1982, September 30, 1983, September 30, 1984, and September 30, 1985, under subsection (a) of this section shall be expended only for increasing the Federal share of grants for construction of treatment works utilizing innovative processes and techniques from 75 per centum to 85 per centum pursuant to section 202(a)(2) of this Act. Including the expenditures authorized by the preceding sentence, a total of 2 per centum of the funds allotted to a State for each of the fiscal years ending September 30, 1979, and September 30, 1980, and 3 per centum of the funds allotted to a State for the fiscal year ending September 30, 1981, under subsection (a) of this section shall be expended only for increasing grants for construction of treatment works pursuant to section 202(a)(2) of this Act. Including the expenditures authorized by the first sentence of this subsection, a total (as determined by the Governor of the State) of not less than 4 per centum nor more than 7½ per centum of the funds allotted to such State for any fiscal year beginning after September 30, 1981, under subsection (c) of this section shall be expended only for increasing the Federal share of grants for construction of treatment works pursuant to section 202(a)(2) of this Act.]

(i) Not less than one-half of 1 per centum of funds allotted to a State for each of the fiscal years ending September 30, 1979 through September 30, 1990, under subsection (c) of this section shall be expended only for increasing the Federal share of grants for construction of treatment works utilizing innovative processes and techniques pursuant to section 202(a)(2) of this Act. Including the ex-

penditures authorized by the preceding sentence, a total of 2 per centum of the funds allotted to a State for each of the fiscal years ending September 30, 1979, and September 30, 1980, and 3 per centum of the funds allotted to a State for the fiscal year ending September 30, 1981, under subsection (c) of this section shall be expended only for increasing grants for construction of treatment works pursuant to section 202(a)(2) of this Act. Including the expenditures authorized by the first sentence of this subsection, a total (as determined by the Governor of the State) of not less than 4 per centum nor more than 7½ per centum of the funds allotted to such State under subsection (c) of this section for each of the fiscal years ending September 30, 1982, through September 30, 1990, shall be expended only for increasing the Federal share of grants for construction of treatment works pursuant to section 202(a)(2) of this Act.

(j)(1) * * *

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(5) In addition to the sums reserved under paragraph (1), the Administrator shall reserve each fiscal year for each State 1 per centum of the sums allotted and available for obligation to such State under this section for each fiscal year beginning on or after October 1, 1986, or $100,000, whichever is greater, for the purpose of carrying out section 319 of this Act. Sums so reserved in a State in any fiscal year for which such State does not request the use of such sums, to the extent such sums exceed $100,000, may be used by such State for other purposes under this title.

* * * * * * *

(l) The Administrator shall reserve each fiscal year beginning after September 30, 1985, 1½ per centum of the sums appropriated under section 207, prior to allotment among the States under subsection (c) of this section. Of the sums reserved under this subsection, two-thirds shall be available to address water quality problems of marine bays and estuaries subject to lower levels of water quality due to the impacts of discharges from combined storm water and sanitary sewer overflows from adjacent urban complexes, and one-third shall be available for the implementation of section 320 of this Act. Sums so reserved shall be subject to the period of availability for obligation established under subsection (d) of this section.

(m)(1) The Administrator is authorized to award from funds available for obligation during each fiscal year ending September 30, 1986, September 30, 1987, September 30, 1988, September 30, 1989, September 30, 1990, September 30, 1991, September 30, 1992, September 30, 1993, and September 30, 1994, a capitalization grant to a State for the purpose of capitalizing a Water Pollution Control Revolving Fund established in compliance with title VI of this Act, where the Governor requests such action in accordance with paragraph (2) of this subsection.

(2) No later than thirty days after the date of enactment of this Act with respect to funds available for obligation in the fiscal year beginning October 1, 1985, and not less than ninety days prior to the start of each of the fiscal years 1987, 1988, 1989, 1990, 1991, 1992, 1993, and 1994, a State shall provide notice of its intent to use all or a portion of the funds available for obligation in that fiscal year

as a capitalization grant for a Water Pollution Control Revolving Fund under title VI of this Act.

(3) Any sum made available to a State's Water Pollution Control Revolving Fund under this subsection shall be in addition to any funds otherwise allotted to that State under section 601(b) during any fiscal year.

* * * * * * *

AUTHORIZATION

SEC. 207. There is authorized to be appropriated to carry out this time, other than section 206(e), 208 and 209, for the fiscal year ending June 30, 1973, not to exceed $5,000,000,000, for the fiscal year ending June 30, 1974, not to exceed $6,000,000,000, and for the fiscal year ending June 30, 1975, not to exceed $7,000,000,000, and, subject to such amounts as are provided in appropriation Acts for the fiscal year ending September 30, 1977, $1,000,000,000 for the fiscal year ending September 30, 1978, $4,500,000,000 and for the fiscal years ending September 30, 1979, September 30, 1980, not to exceed $5,000,000,000; for the fiscal year ending September 30, 1981, not to exceed $2,548,837,000; and for the fiscal years ending September 30, 1982, September 30, 1983, September 30, 1984, and September 30, 1985, not to exceed $2,400,000,000 per fiscal year[.]; *and to carry out this title, other than sections 206(e), 208, and 209, subject to such amounts as are provided in appropriation Acts, for each of the fiscal years ending September 30, 1986, September 30, 1987, and September 30, 1988, not to exceed $2,400,000,000; and for each of the fiscal years ending September 30, 1989, and September 30, 1990, not to exceed $1,200,000,000.*

* * * * * * *

INDIAN TRIBES

SEC. 220. (a) The Administrator, in cooperation with the Director of the Indian Health Service, shall assess the need for sewage treatment works to serve Indian tribes, the degree to which such needs will be met through funds allotted to States under section 205 of this Act and priority lists in accordance with section 216 of this Act, and any obstacles which prevent such needs from being met. The Administrator shall submit a report to the Congress for such assessment no later than one year after the enactment of the Clean Water Act Amendments of 1985.

(b) Beginning with fiscal year 1987, the Administrrator is authorized to reserve each fiscal year up to one-half of one per centum of the sums appropriated under section 207, prior to allotment among the States under section 205(e), based on the determination of unmet needs reported under subsection (a). Sums reserved under this subsection shall be available for grants to provide sewage treatment works to serve Indian tribes.

(c) The Administrator is authorized to make special provision for the treatment of Indian tribes under this title, including the treatment of Indian tribes as States to the degree necessary to carry out the purposes of this section. Such special provision may include the direct provision of funds reserved under subsection (b) to the govern-

ing bodies of Indian tribes, and the determination of priorities by Indian tribes, where not determined by the Administrator in cooperation with the Director of the Indian Health Service. The Administrator is authorized to reduce the non-Federal share otherwise required under section 202 with respect to Indian tribes, as determined by the Administrator in cooperation with the Director of the Indian Health Service.

TITLE III—STANDARDS AND ENFORCEMENT

EFFLUENT LIMITATIONS

SEC. 301. (a) * * *
(b)(1) * * *

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(2)(A) * * *

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(C) [not later than July 1, 1984,] with respect to all toxic pollutants referred to in table 1 of Committee Print Numbered 95–30 of the Committee on Public Works and Transportation of the House of Representatives compliance with effluent limitations in accordance with subparagraph (A) of this paragraph *as expeditiously as practicable but in no case later than three years after the date such limitations are promulgated under section 304(b), and in no case later than July 1, 1988*;

* * * * * * *

(E) [not later than July 1, 1984,] *as expeditiously as practicable but in no case later than three years after the date such limitations are promulgated under section 304(b), and in no case later than July 1, 1988, compliance with* effluent limitations for categories and classes of point sources, other than publicly owned treatment works, which in the case of pollutants identified pursuant to section 304(a)(4) of this Act shall require application of the best conventional pollutant control technology as determined in accordance with regulations issued by the Administrator pursuant to section 304(b)(4) of this Act; and

(F) for all pollutants (other than those subject to subparagraphs (C), (D), or (E) of this paragraph) compliance with effluent limitations in accordance with subparagraph (A) of this paragraph [not] *as expeditiously as possible but in no case* later than 3 years after the date such limitations are established [or not later than July 1, 1984, whichever is later, but in no case later than July 1, 1987.] *and in no case later than July 1, 1988.*

(3)(A) for effluent limitations under paragraph (1)(A)(i) of this subsection promulgated after January 1, 1982, and requiring a level of control substantially greater or based on fundamentally different control technology than under permits for such industrial category issued before such date, compliance as expeditiously as practicable but in no case later than three years after the date such limitations are promulgated under section 304(b), and in no case later than July 1, 1988; and

(B) for any effluent limitation in accordance with paragraph (1)(A)(i), (2)(A)(i), or (2)(E) of this subsection established only on the

basis of section 402(a)(1) in a permit issued after enactment of the Clean Water Act Amendments of 1985, compliance as expeditiously as practicable but in no case later than three years after the date such limitations are established, and in no case later than July 1, 1988.

* * * * * * *

(g)(1) [The Administrator, with the concurrence of the State, shall modify the requirements of subsection (b)(2)(A) of this section with respect to the discharge of any pollutant (other than pollutants identified pursuant to section 304(a)(4) of this Act, toxic pollutants subject to section 307(a) of this Act, and the thermal component of discharges) from any point source.] *The Administrator, with the concurrence of the State, may modify the requirements of subsection (b)(2)(A) of this section with respect to the discharge from any point source of ammonia, chlorine, color, iron, or total phenols (4AAP) (when determined by the Administrator to be a nonconventional pollutant under this Act)* upon a showing by the owner or operator of such point source satisfactory to the Administrator that—

(A) Such modified requirements will result at a minimum in compliance with the requirements of subsection (b)(1)(A) or (C) of this section, whichever is applicable;

(B) such modified requirements will not result in any additional requirements on any other point or nonpoint source; and

(C) such modification will not interfere with the attainment or maintenance of that water quality which shall assure protection of public water supplies, and the protection and propagation of a balanced population of shellfish, fish, and wildlife, and allow recreational activities, in and on the water and such modification will not result in the discharge of pollutants in quantities which may reasonably be anticipated to pose an unacceptable risk to human health of the environment because of bioaccumulation, persistency in the environment, acute toxicity, chronic toxicity (including carcinogenicity, mutagenicity or teratogenicity), or synergistic propensities.

(2) If an owner or operator of a point source applies for a modification under this subsection with respect to the discharge of any pollutant, such owner or operator shall be eligible to apply for modification under subsection (c) of this section with respect to such pollutant only during the same time-period as he is eligible to apply for a modification under this subsection.

(3) The Administrator may evaluate pollutants subject to this subsection prior to the enactment of the Clean Water Act Amendments of 1985, and if the Administrator determines that for one or more pollutants satisfactory test methods and data are available to make the determination required by paragraph (1), may recommend to the Congress the inclusion of such pollutants under this subsection.

(4) Any request for a modification under this subsection shall be deemed to have been denied, if not approved by final agency action within one year after submission to the Administrator.

(5) The amendment made to this subsection by the Clean Water Act Amendments of 1985 shall apply to all modification requests under this subsection pending on the date of enactment of the Clean

Water Act Amendments of 1985. Such amendment to this subsection shall not have the effect of extending or reopening the deadline established in section 301(j)(1)(B).

(h) The Administrator, with the concurrence of the State, may issue a permit under section 402 which modifies the requirements of subsection (b)(1)(B) of this section with respect to the discharge of any pollutant from a publicly owned treatment works into marine waters, if the applicant demonstrates to the satisfaction of the Administrator that—

(1) there is an applicable water quality standard specific to the pollutant for which the modification is requested, which has been identified under section 304(a)(6) of this Act;

(2) such modified requirements will not interfere with the attainment or maintenance of that water quality which assures protection of public water supplies and the protection and propagation of a balanced, indigenous population of shellfish, fish and wildlife, and allows recreational activities, in and on the water;

(3) the applicant has established a system for monitoring the impact of such discharge on a representative sample of aquatic biota, to the extent practicable;

(4) such modified requirements will not result in any additional requirements on any other point or nonprofit source;

[(5) all applicable pretreatment requirements for sources introducing waste into such treatment works will be enforced;]

(5) sources introducing waste into such treatment works are in compliance with all applicable pretreatment requirements and the applicant has assured continued compliance with such requirements and, in the case of any treatment works serving a population of five thousand or more, the applicant has adopted and is enforcing a program to control the entrance of toxic pollutants from industrial sources into such treatment works, comparable to that required by section 402(b)(8);

(6) to the extent practicable, the applicant has established a schedule of activities designed to eliminate the entrance of toxic pollutants from nonindustrial sources into such treatment works;

(7) there will be no new or substantially increased discharges from the point source of the pollutant to which the modification applies above that volume of discharge specified in the permit[.];

(8) the applicant at the time such modification becomes effective will be discharging effluent which has received at least primary or equivalent treatment. Such marine waters must exhibit characteristics assuring that water providing dilution does not contain significant amounts of previously discharged effluent from such treatment works. For the purposes of this paragraph, "primary or equivalent treatment" means treatment by screening, sedimentation, and skimming adequate to remove at least 30 per centum of the biological oxygen demanding materal and of the suspended solids in the treatment works influent, and disinfection, where appropriate. No permit issued under this subsection shall authorize the discharge of any pollutant into saline estuarine waters which at the time of application do not

support a balanced indigenous population of shellfish, fish and wildlife, or allow recreation in and on the waters or which exhibit ambient water quality below applicable water quality standards adopted for the protection of public water supplies, shelifish, fish and wildlife or recreational activities or such other standards necessary to assure support and protection of such uses. The prohibition contained in the preceding sentence shall apply without regard to the presence or absence of a causal relationship between such characteristics and the applicant's current or proposed discharge.

For the purposes of this subsection the phrase "the discharge of any pollutant into marine waters" refers to a discharge into deep waters of the territorial sea or the waters of the contiguous zone, or into saline estuarine waters where there is strong tidal movement and other hydrological and geological characteristics which the Administrator determines necessary to allow compliance with paragraph (2) of this subsection, and section 101(a)(2) of this Act. A municipality which applies secondary treatment shall be eligible to receive a permit pursuant to this subsection which modifies the requirements of subsection (b)(1)(B) of this section with respect to the discharge of any pollutant from any treatment works owned by such municipality into marine waters. No permit issued under this subsection shall authorize the discharge of sewage sludge into marine waters.

* * * * * * *

(j)(1) Any application filed under this section for a modification of the provisions of—

(A) subsection (b)(1)(B) under subsection (h) of this section shall be filed not late than the 356th day which begins after the date of enactment of the Municipal Wastewater Treatment Construction Grant Amendments of 1981 *except that a publicly owned treatment works which prior to December 31, 1982, had a contractural arrangement to use a portion of the capacity of an ocean outfall operated by another publicly owned treatment works which has applied for or received a modification under subsection (h) of this section may apply for a modification under subsection (h) in its own right not later than thirty days after the enactment of the Clean Water Act Amendments of 1985;*

(B) subsection (b)((2)(A) as it applies to pollutants identified in subsection (b)(2(F) shall be filed not later than 270 days after the date of promulgation of an applicable effluent guideline under section 304 or not late than 270 days after the date of enactment of the Clean Water Act of 1977, whichever is later.

(2) Any application for a modification filed under subsection (g) of this section shall not operate to stay any requirement under this Act, unless in the judgment of the Administrator such a stay or the modification sought will not result in the discharge of pollutants in quantities which may reasonably be anticipated to pose an unacceptable risk to human health or the environment because of bioaccumulation, persistency in the environment, acute toxicity, chronic toxicity (including carcinogenicity, mutagenicity or teratogenicity), or synergistic propensities, and that there is a substantial likeli-

hood that the applicant will succeed on the merits of such application. *An application for a modification under subsection (g) shall not stay the applicant's obligation to comply with effluent limitations for all pollutants not the subject of an application for modification, and nothing in this section shall preclude the Administrator (or State as appropriate) from issuing a permit containing effluent limitations for all pollutants not subject to a stay under this subsection pending a final decision on the request for a modification.* In the case of an application filed under subsection (g) of this section, the Administrator may condition any stay granted under this paragraph on requiring the filing of a bond or other appropriate security to assure timely compliance with the requirements from which a modification is sought.

* * * * * * *

(1) [The] *Other than as provided in subsection (n) of this subsection, the* Administrator may not modify any requirement of this section as it applies to any specific pollutant which is on the toxic pollutant list under section 307(a)(1) of this Act.

* * * * * * *

(n)(1) The Administrator, with the concurrence of the State, may establish an alternative requirement under subsection (b)(2) or section 307(b) for a facility that modifies the requirements of national effluent limitation guidelines or categorical pretreatment standards that would otherwise be applicable to such facility, if the owner or operator of such facility demonstrates to the satisfaction of the Administrator that—

(A) the facility is fundamentally different with respect to the factors (other than cost) specified in section 304 (b) or (g) and considered by the Administrator in establishing such national effluent limitation guidelines or categorical pretreatment standards;

(B) the application is based solely on information and supporting data submitted to the Administrator during the rulemaking for establishment of the applicable national effluent limitation guidelines or categorical pretreatment standard specifically raising the factors that are fundamentally different for such facility;

(C) the alternative requirement is no less stringent than justified by the fundamental difference; and

(D) the alternative requirement will not result in a non-water quality environemntal impact which is markedly more adverse than the impact considered by the Administrator in establishing such national effluent limitation guideline or categorical pretreatment standard.

(2)(A) an application for an alternative requirement under this subsection shall be submitted to the Administrator not later than one hundred twenty days after the publication of the final effluent limitation guideline or categorical pretreatment standard in the Federal Register. The Administrator shall deny any application that is not compete, without providing an opportunity for reapplication.

(B) an application for an alternative requirement under this subsection shall be deemed to have been denied, if not approved by final agency action within two hundred forty days after submission to the Administrator.

(C) For the purposes of this subsection, an application for an alternative requirement based on fundamentally different factor which is pending on the date of enactment of the Clean Water Act Amendments of 1985 shall be deemed to have been submitted to the Administrator thirty days after such date of enactment.

(3) an application for an altenative requirement under this subsection shall not stay the applicant's obligation to comply with the effluent limitation guideline or categorical pretreatment standard which is the subject of the application.

(4) The authority of this subsection shall apply only to those primary industrial categories identified in the permit regulations issued under section 402 as of the date of enactment of the Clean Water Act Amendments of 1985.

(o) The Administrator shall prescribe and collect from each applicant fees reflecting the reasonable administative costs incurred in reviewing and processing applications for modifications submitted to the Administrator pursuant to section 301 (c), (g), (h), (i), (m), and (n), section 304(d)(4), and section 316(a) of this Act. All amounts collected by the Administrator under this subsection shall be deposited into miscellaneous receipts of the Treasury.

WATER QUALITY RELATED EFFLUENT LIMITATIONS

SEC. 302. (a) Whenever, in the judgment of the Administrator, *or as identified under section 305(c),* discharges of pollutants from a point source or group of point sources, with the application of effluent limitations required under section 301(b)(2) of this Act, would interfere with the attainment or maintenance of that water quality in a specific portion of the navigable waters which shall assure protection of public water supplies, agricultural and industrial uses, and the protection and propagation of a balanced population of shellfish, fish and wildlife, and allow recreational activities in and on the water, effluent limitations (including alternative effluent control strategies) for such point source or sources shall be established which can reasonably be expected to contribute to the attainment or maintenance of such water quality.

[(b)(1) Prior to establishment of any effluent limitation pursuant to subsection (a) of this section, the Administrator shall issue notice of intent to establish such limitation and within ninety days of such notice hold a public hearing to determine the relationship of the economic and social costs of achieving any such limitation or limitations, including any economic or social dislocation in the affected community or communities, to the social and economic benefits to be obtained (including the attainment of the objective of this Act) and to determine whether or not such effluent limitations can be implemented with available technology or other alternative control strategies.

[(2) If a person affected by such limitation demonstrates at such hearing that (whether or not such technology or other alternative control strategies are available) there is no reasonable relationship

between the economic and social costs and the benefits to be obtained (including attainment of the objective of this Act), such limitation shall not become effective and the Administrator shall adjust such limitation as it applies to such person.]

(b)(1) Prior to establishment of any effluent limitation pursuant to subsection (a) of this section, the Administrator shall publish such proposed limitation and within ninety days of such publication hold a public hearing.

(2)(A) The Administrator, with the concurrence of the State, may issue a permit which modifies the effluent limitations required by subsection (a) of this section for pollutants other than toxic pollutants, if the applicant demonstrates at such hearing that (whether or not technology or other alternative control strategies are available) there is no reasonable relationship between the economic and social costs and the benefits to be obtained (including attainment of the objective of this Act) from achieving such limitation.

(B) The Administrator, with the concurrence of the State, may issue a permit which modifies the effluent limitations required by subsection (a) of this section for toxic pollutants for a single period not to exceed five years, if the applicant demonstrates to the satisfaction of the Administrator that such modified requirements (1) will represent the maximum degree of control within the economic capability of the owner and operator of the source, and (2) will result in reasonable further progress beyond the requirements of section 301(b)(2) toward the requirements of subsection (a) of this section.

(c) The establishment of effluent limitations under this section shall not operate to delay the application of any effluent limitation established under section 301 of this Act.

WATER QUALITY STANDARDS AND IMPLEMENTATION PLANS

SEC. 303. (a)(1) * * *

* * * * * * *

(c)(1) * * *

(2)*(A)* Whenever the State revises or adopts a new standard, such revised or new standard shall be submitted to the Administator. Such revised or new water quality standard shall consist of the designated uses of the navigable waters involved and the water quality criteria for such waters based upon such uses. Such standards shall be such as to protect the public health or welfare, enhance the quality of water and serve the purposes of this Act. Such standards shall be established taking into consideration their use and value for public water supplies, propagation of fish and wildlife, recreational purposes, and agricultural, industrial, and other purposes, and also taking into consideration their use and value for navigation.

(B) Whenever a State reviews water quality standards pursuant to paragraph (1) of this subsection, or revises or adopts new standards pursuant to this paragraph, such State shall adopt criteria for all toxic pollutants listed pursuant to section 307(a)(1) of this Act, the discharge or presence of which in the affected waters could reasonably be expected to interfere with those designated uses adopted by the State, as necessary to support such designated uses. Such criteria

shall be specific numerical criteria for such toxic pollutants and in addition may include criteria based on biological monitoring or assessment methods consistent with information published pursuant to section 304(a)(8). Particular attention shall be given to toxic pollutants which are highly persistent in the environment, bioaccumulative, or known or suspected carcinogens, mutagens, or teratogens. Nothing in this section shall be construed to limit or delay the use of effluent limitations or other permit conditions based on or involving biological monitoring or assessment methods or preveiously adopted numerical criteria.

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(d)(1) * * *

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(4) Not later than two years after the submittal of the identification required by section 305(c)(1) of this Act, each State shall establish effluent limitations for point sources discharging into each portion of the navigable waters identified under section 305(c)(1)(A) as necessary to attain applicable water quality standards, taking into account any substantial nonpoint source contributions of toxic pollutants and existing or planned controls on all sources. Such effluent limitations shall be incorporated into permits under section 402 of this Act, which shall provide for compliance as expeditiously as practicable, but in no event later than three years after the establishment of such effluent limitation.

(5)(A) For waters identified in paragraph (1)(A) where the applicable water quality standard has not yet been attained, any effluent limitation based on a total maximum daily load or other waste load allocation established under this section may be revised only if (i) the cumulative effect of all such revised effluent limitations based on such total maximum daily load or waste load allocation will assure the attainment of such water quality standard, or (ii) the designated use which is not being attained is removed in accordance with regulations established under this section.

(B) For water identified in paragraph (1)(A) where the quality of such waters equals or exceeds levels necessary to protect the designated use for such waters, any effluent limitation based on a total maximum daily load or other waste load allocation established under this section, or other permitting standard, may be revised only if such revision is subject to and consistent with the antidegradation policy established under this section.

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SEC. 304. (a)(1) * * *

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(7) The Administrator, after consultation with appropriate State agencies and on the basis of criteria and information published under paragraphs (1) and (2) of this subsection, shall develop and publish, within nine months after the date of enactment of the Clean Water Act Amendments of 1985, guidance to the States on performing the identification required by section 305(c)(1) of this Act.

(8) The Administrator, after consultation with appropriate State agencies and within two years after the date of enactment of the Clean Water Act Amendments of 1985, shall develop and publish information on methods for establishing and measuring water quality criteria for toxic pollutants on other bases than pollutant-by-pollutant criteria, including biological monitoring and assessment methods.

* * * * * * *

(k)(1) The Administrator shall enter into agreements with the Secretary of Agriculture, the Secretary of the Army, and the Secretary of the Interior, and the heads of such other departments, agencies, and instrumentalities of the United States as the Administrator determines, to provide for the maximum utilization of other Federal laws and programs for the purpose of achieving and maintaining water quality through appropriate implementation of plans approved under section 208 of this Act *ana nonpoint source pollution management programs approved under section 319 of this Act.*

* * * * * * *

(l) Within twelve months of the date of enactment of the Clean Water Act Amendments of 1985, and biennially thereafter, the Administrator shall publish in the Federal Register a plan which shall:

(A) establish a schedule for the annual review and revision of promulgated effluent guidelines, in accordance with subsection (b) of this section;

(B) identify categories of sources discharging toxic or nonconventional pollutants for which guidelines under subsection (b)(2) of this section and section 306 have not previously been published; and

(C) establish a schedule for promulgation of effluent guidelines for categories identified in subparagraph (B), under which promulgation of such guidelines shall be no later than four years after the date of enactment for categories identified in the first published plan or three years after the publication of the plan for categories identified in later published plans.

(2) The Administrator shall provide for public review and comment on the plan prior to final publications.

WATER QUALITY INVENTORY

SEC. 305. (a) * * *

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(c) Each State shall prepare and submit to the Adminstrator and the Congress within two years after the enactment of the Clean Water Act Amendments of 1985, nad revise biennially thereafter, an identification of—

(1) those waters within or adjacent to such State which after the application of effluent limitation required under section 301(b)(2) of this Act cannot reasonably be anticipated to attain or maintain (A) water quality standards for such waters reviewed, revised or adopted in accordance with section

303(c)(2)(B) of this Act, due to toxic pollutants, or (B) that water quality which shall assure protection of public health, public water supplies, agricultural and industrial uses, and the protection and propagation of a balanced population of shellfish, fish and wildlife, and allow recreational activities in and on the water; and

((2) those waters within or adjacent to such State which are public water supplies or otherwise important to public health protection, or which have a high quality use designation, and which because of such use and current or potential pollution are of high priority to such State.

In the case of any State which fails to submit the identification required by paragraph (1), or which submits an incomplete identification, the Administrator shall promptly prepare an identification in accordance with paragraph (1)

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INSPECTIONS, MONITORING, AND ENTRY

SEC. 308. (a) Whenever required to carry out the objective of this Act, including but not limited to (1) developing or assisting in the development of any effluent limitation, or other limitation, prohibition, or effluent standard, pretreatment standard, or standard of performance under this Act; (2) determining whether any person is in violation of any such effluent limitation, prohibition or effluent standard, pretreatment standard, or standard of performance; (3) any requirement established under this section; or (4) carrying out section 305; 311, 402, 404 (relating to State permit programs), *405* and 504 of this Act—

(A) the Administrator shall require the owner or operator of any point source to (i) establish and maintain such records, (ii) make such reports, (iii) install, use, and maintain such monitoring equipment or methods (including where appropriate, biological monitoring methods), (iv) sample such effluents (in accordance with such methods, at such locations, at such intervals, and in such manner as the Administrator shall prescribe), and (v) provide such other information as he may reasonably require; and

(B) the Administrator or his authorized representative, upon presentation of his credentials—

(i) shall have a right of entry to, upon, or through any premises in which an effluent source is located in or which any records required to be maintained under clause (A) of this subsection are located, and

(ii) may at reasonable times have access to any copy any records, inspect any monitoring equipment or method required under clause (A), and sample any effluents which the owner or operator of such sources is required to sample under such clause.

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FEDERAL ENFORCEMENT

SEC. 309. (a)(1) * * *

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[(c)(1) Any person who willfully or negligently violates section 301, 302, 306, 307, or 308 of this Act, or any permit condition or limitation implementing any of such actions in a permit issued under section 402 of this Act by the Administrator or by a State, or in a permit issued under section 404 of this Act by a State shall be published by a fine of not less than $2,500 nor more than $25,000 per day of violation, or by imprisonment for not more than one year, or by both. If the conviction is for a violation committed after a first conviction of such person under this paragraph, punishment shall be by a fine of not more than $50,000 per day of violation, or by imprisonment for not more than two years, or by both.

[(2) Any person who knowingly makes any false statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained under this Act or who falsifies, tampers with, or knowingly renders inaccurate any monitoring device or method required to be maintained under this Act, shall upon conviction, be punished by a fine of not more than $10,000, or by imprisonment for not more than six months, or by both.

[(3) For the purposes of this subsection, the term "person" shall mean, in addition to the definition contained in section 502(5) of this Act, any responsible corporate officer.]

(c)(1) Any person who (A) negligently violates section 301, 302, 303, 306, 307, 308, 318, or 405 of this Act, or any permit condition or limitation implementing any of such sections in a permit issued under section 402 of this Act by the Administrator or by a State, or any requirement imposed in a pretreatment program approved under section 402(a)(3) and (b)(8) of this Act or in a permit issued under section 404 of this Act by the Secretary of the Army or by a State, or who (B) negligently introduces into a sewer system or into a publicly owned treatment works any pollutant or hazardous substance which such person knew or reasonably should have known could cause personal injury or property damage, or, other than in compliance with all applicable Federal, State, or local requirements or permits, causes such treatment works to violate any effluent limitation or condition in any permit issued to the treatment works under section 402 of this Act by the Administrator or a State, shall be punished by a fine of not less than $2,500 nor more than $25,000 per day of violation, or by imprisonment for not more than one year, or by both.

(2) Any person who (A) knowingly violates section 301, 302, 303, 306, 307, 308, 318, or 405 of this Act, or any permit condition or limitation implementing any of such sections in a permit issued under section 402 of this Act by the Administrator or by a State, or any requirement imposed in a pretreatment program approved under section 402(b)(8) of this Act or in a permit issued under section 404 of this Act by the Secretary of the Army or by a State, or who (B) knowingly introduces into a sewer system or into a publicly owned treatment works any pollutant or hazardous substance which such

person knew or reasonably should have known could cause personal injury or property damage, or, other then in compliance with all applicable Federal, State, or local requirements or permits, causes such treatment works to violate any effluent limitation or condition in any permit issued to the treatment works under section 402 of this Act by the Administrator or a State, shall be punished by a fine of not less than $5,000 nor more than $50,000 per day of violation, or by imprisonment for not more than three years, or by both.

(3)(A) Any person who knowingly violates section 301, 302, 303, 306, 307, 308, 318, or 405 of this Act, or any permit condition or limitation implementing any of such sections in a permit issued under section 402 of this Act by the Administrator or by a State, or in a permit issued under section 404 of this Act by the Secretary of the Army or by a State, and who knows at that time that he thereby places another person in imminent danger of death or serious bodily injury, shall, upon conviction, be subject to a fine of not more than $250,000 or imprisonment of not more than fifteen years, or both. A defendant that is an organization shall, upon conviction of violating this subparagraph, be subject to a fine of not more than $1,000,000.

(B) for the purpose of subparagraph (A) of this paragraph—

(i) In determining whether a defendant who is a natural person knew that his conduct placed another person in imminent danger of death or serious bodily injury—

(I) the person is responsible only for actual awareness or actual belief that he possessed; and

(II) knowledge possessed by a person other than the defendant but not by the defendant himself may not be attributed to the defendant:

Provided, That in proving the defendant's possession of actual knowledge, circumstantial evidence may be used, including evidence that the defendant took affirmative steps to shield himself from relevant information.

(ii) It is an affirmative defense to prosecution that the conduct charged was consented to by the person endangered and that the danger and conduct charged were reasonably foreseeable hazards of—

(I) an occupation, a business, or a profession; or

(II) medical treatment or medical or scientific experimentation conducted by professionally approved methods and such other person had been made aware of the risks involved prior to giving consent. The defendant may establish an affirmative defense under this subparagraph by a preponderance of the evidence.

(iii) The term "organization" means a legal entity, other than a government, established or organized for any purpose, and such term includes a corporation, company, association, firm, partnership, joint stock company, foundation, institution, trust, society, union, or any other association of persons.

(iv) The term "serious bodily injury" means bodily injury which involves a substantial risk of death, unconsciousness, extreme physical pain, protracted and obvious disfigurement, or protracted loss or impairment of the function of a bodily member, organ, or mental faculty.

(4) Any person who knowingly makes any false material statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained under this Act or who knowingly falsifies, tampers with, or renders inaccurate any monitoring device or method required to be maintained under this Act, shall upon conviction, be punished by a fine of not more than $10,000, or by imprisonment for not more than two years, or by both.

(5) If a conviction is for a violation of paragraph (1), (2), (3), or (4) of this subsection committed after a first conviction of such person under the same paragraph, the maximum punishment under the respective paragraph shall be doubled with respect to both fine and imprisonment.

(6) For the purpose of paragraphs (1), (2), (3), and (4) the term "person" shall mean, in addition to the definition contained in section 502(5) of this Act, any responsible corporate officer.

(7) For the purpose of paragraphs (1) and (2), the term "hazardous substance" shall mean (A) any substance designated pursuant to section 311(b)(2)(A) of this Act, (B) any element, compound, mixture, solution, or substance designated pursuant to section 102 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, (C) any hazardous waste having the characteristics identified under or listed pursuant to section 3001 of the Solid Waste Disposal Act (but not including any waste the regulation of which under the Solid Waste Disposal Act has been suspended by Act of Congress), (D) any toxic pollutant listed under section 307(a) of this Act, and (E) any imminently hazardous chemical substance or mixture with respect to which the Administrator has taken action pursuant to section 7 of the Toxic Substances Control Act.

(d) Any person who violates section 301, 302, 306, 307, 308, 318 or 405 of this Act, or any permit condition or limitation implementing any of such sections in a permit issued under section 402 of this Act by the Administrator, or by a State, or in a permit issued under section 404 of this Act by a State, *or any requirement imposed in a pretreatment program approved under section 402(a)(13) and (b)(8) of this Act,* and any person who violates any order issued by the Administrator under subsection (a) of this section, shall be subject to a civil penalty, not to exceed [$10,000 per day of such violation.] *$25,000 per day for each violation. In determining the amount of a civil penalty the court shall consider the seriousness of the violation or violations, the economic benefit (if any) resulting from the violation, any history of such violations, any good-faith efforts to comply with the applicable requirements, the economic impact of the penalty on the violator, and such other matters as justice may require.*

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(g)(1) ADMINISTRATIVE PENALTIES.—In addition to any other relief provided, whenever on the basis of any information available the Administrator finds that any person has violated sections 301, 302, 303, 306, 307, 308, 318, or 405 of this Act, or as violated any permit condition or limitation implementing any of such sections in a permit issued under sections 402 of this Act by him or by a State, or in a permit issued under section 404 by a State or the Secretary of

the Army, or any requirement imposed in a pretreatment program approved under section 402(a)(3) and (b)(8) of this Act, the Administrator may, after notice to the State in which the violation occurs, issue an order assessing a civil penalty of not more than $10,000 per day for each violation, up to a maximum administrative penalty of $125,000.

(2) The authority provided in paragraph (1) of this subsection shall expire on September 30, 1990.

(3) PROCEDURE.—(A) A civil penalty assessed by the Administrator under this subsection shall be by an order made after opportunity (provided in accordance with this subparagraph) for a hearing. Before issuing the order, the Administrator shall give to the person to be assessed a civil penalty written notice of the Administrator's proposal to issue such order and the opportunity to request, within thirty days of the date the notice is received by such person, a hearing on the proposed order. Such hearing shall not be subject to section 554 or 556 of title 5, United States Code, but shall provide a reasonable opportunity to be heard and to present evidence.

(B) The Administrator shall provide public notice of and reasonable opportunity to comment on any proposed assessment.

(C) Any citizen who comments on a proposed assessment under subparagraph (B) shall be given notice of any hearing held under this subsection and of any order assessing a penalty. In any hearing held under subparagraph (A), such citizen shall have a reasonable opportunity to be heard and to present evidence. If no hearing is held prior to issuance of the order assessing the penalty, then upon presentation by such citizen, within thirty days of issuance of the order, of evidence that such order was inadequate or improper, the Administrator shall set aside such order immediately and provide a hearing in accordance with subparagraph (A) on the proposed order.

(D) Any order issued under this subsection shall become final thirty days following its issuance unless an appeal it taken pursuant to paragraph (6) or the order is set aside pursuant to subparagraph (C).

(4) CONTENT OF ORDER.—In determining the amount of a civil penalty, the Administrator shall take into account the seriousness of the violation or violations, the economic benefit (if any) resulting from the violation, any history of such violations, any good-faith efforts to comply with the applicable requirements, the economic impact of the penalty on the violator, and such other matters as justice may require.

(5) EFFECT OF ORDER.—(A) Action taken by the Administrator pursuant to this subsection shall not affect or limit the Administrator's authority to enforce any provision of this Act: Provided, however, That any violation with respect to which the Administrator has commenced and is diligently prosecuting an action under this subsection, or for which the Administrator has issued a final order not subject to further judicial review and the violator paid a penalty assessed under this subsection, shall not be the subject of a civil penalty action under section 309(d), section 311(b), or section 505 of this Act; Provided further, That the foregoing limitation on civil penalty actions under section 505 of this Act shall not apply with respect to any violation for which (i) a civil action under section 505(a)(1) of this Act has been filed prior to commencement of an action under

this subsection, or (ii) a notice of violation under section 505(b)(1) of this Act has been given prior to commencement of an action under this subsection and an action under section 505(a)(1) of this Act is filed prior to 120 days after such notice is given.

(B) Nothing in this subsection shall change the procedures now existing under other subsections of section 309 of this Act for issuance and enforcement of orders by the Administrator.

(C) No action by the Administrator pursuant to this subsection shall affect any person's obligation to comply with any section of this Act or with the terms and conditions of any permit issued pursuant to section 402 or 404 of this Act.

(6) JUDICIAL REVIEW.—Any person against whom a civil penalty order is issued or who commented on a proposed assessment pursuant to paragraph (3) may file an appeal of such order in the United States district court for the District of Columbia or in the district in which the violation is alleged to have occurred. This appeal may only be filed within the thirty-day period beginning on the date the civil penalty order is issued. Appellant shall simultaneously send a copy of the appeal by certified mail to the Administrator and to the Attorney General. The Administrator shall promptly file in such court a certified copy of the record on which the order was issued. The district court shall not set aside or remand such order unless there is not substantial evidence in the record, taken as a whole, to support the finding of a violation or unless the Administrator's assessment of the penalty constitutes an abuse of discretion and shall not impose additional civil penalties for the same violation unless the Administrator's assessment of the penalty constitutes an abuse of discretion.

(7) COLLECTION.—If any person fails to pay an assessment of a civil penalty—

(A) after an order is final under paragraph (3), or

(B) after a court in an action brought under paragraph (6) has entered a final judgment in favor of the Administrator,

the Administrator shall request the Attorney General to bring a civil action in an appropriate district court to recover the amount assessed (plus costs, attorneys' fees, and interest at currently prevailing rates from the date of the final order or the date of such final judgment, as the case may be). In such an action, the validity, amount, and appropriateness of such penalty shall not be subject to review.

(8) SUBPOENA.—The Administrator may, in connection with administrative proceedings under this subsection, issue subpoenas compelling the attendance and testimony of witnesses and subpoenas duces tecum, and may request the Attorney General to bring an action to enforce any subpoena under this section. The district courts shall have jurisdiction to enforce such subpoenas and impose sanctions.

* * * * * * *

CLEAN LAKES

SEC. 314. [(a) Each State shall prepare or establish, and submit to the Administrator for his approval—

[(1) an identification and classification according to eutrophic condition of all publicly owned fresh water lakes in such State;

[(2) procedures, processes, and methods (including land use requirements), to control sources of pollution of such lakes; and

[(3) methods and procedures, in conjunction with appropriate Federal agencies, to restore the quality of such lakes.]

(a)(1) Each State shall prepare a report on a biennial basis which shall include—

(A) an identification and classification according to eutrophic condition of all publicly owned lakes in such State;

(B) a list and description of those publicly owned lakes for which uses are known to be impaired, including those lakes which are known to not meet applicable water quality standards, or which require implementation of protection programs to maintain compliance with applicable standards; and

(C) a description of the State programs and methods to control sources of pollution of lakes and protect the quality of lakes.

(2) The report provided for in paragraph (1) shall be included in the report required under section 305(b) of this Act.

(3) A State must submit a report in accord with paragraph (1) in order to receive a grant under this section.

* * * * * * *

(c)(1) The amount granted to any State for any fiscal year under this section shall not exceed 70 per centum of the funds expended by such State in such year for carrying out approved methods and procedures under this section.

(2) There is authorized to be appropriated $50,000,000 for the fiscal year ending June 30, 1973; $100,000,000 for the fiscal year 1974; $150,000,000 for the fiscal year 1975, $50,00,000 for fiscal year 1977, $60,000,000 for fiscal year 1978, $60,000,000 for fiscal year 1979, $60,000,000 for fiscal year 1980, $30,000,000 for fiscal year 1981, [and] $30,000,000 for fiscal year 1982 , *and $30,000,000 per fiscal year for fiscal years 1986, 1987, 1988, and 1989* for grants to States under this section which such sums shall remain available until expended. The Administrator shall provide for an equitable distribution of such sums to the States with approved methods and procedures under this section.

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NONPOINT SOURCE POLLUTION MANAGEMENT PROGRAM

SEC. 319. (a)(1) Each State, by itself or in combination with adjacent States, shall after notice and opportunity for public comment, submit to the Administrator, within eighteen months after the date of enactment of the Clean Water Act Amendments of 1985, a proposed nonpoint source pollution management program which shall—

(A) identify those waters within its boundaries which without additional action to control nonpoint sources of pollution cannot reasonably be expected to attain or maintain (i) applica-

ble water quality standards, or (ii) the goals and requirements of the Act;

(B) designate categories or subcategories of nonpoint sources of pollutants or, where appropriate, particular nonpoint sources, that contribute significant pollution loadings to the waters identified under subparagraph (A);

(C) identify best management practices which will be undertaken to reduce pollutant loadings resulting from each category, subcategory or particular nonpoint source designated under subparagraph (B), taking into account the impact of the proposed practice on ground water quality;

(D) identify programs (including, as appropriate, nonregulatory or regulatory programs for enforcement, technical assistance, financial assistance, education, training, technology transfer, and demonstration projects) to achieve implementation of the best management practices by the categories, subcategories, and particular nonpoint sources designated under subparagraph (B);

(E) include a schedule containing annual milestones for (i) utilization of the program implementation methods identified in subparagraph (D), and (ii) implementation of the best management practices identified in subparagraph (C) by the categories, subcategories, or particular nonpoint sources designated under subparagraph (B). Such schedule shall provide for utilization of the program implementation methods and implementation of best management practices at the earliest practicable date;

(F)(i) include a statement from the attorney general of such State or States (for the attorney for those State water pollution control agencies which have independent legal counsel) that the laws of such State or States, as the case may be, provide adequate authority to carry out the described program, or what additional authorities would be necessary to do so, and (ii) if this statement identifies additional needed authorities, include a schedule and commitment by the State to seek such authorities as expeditiously as practicable; and

(G) include an identification of Federal financial assistance programs and Federal development projects for which the State will review individual assistance applications or development projects for their effect on water quality pursuant to the procedures set forth in Executive Order 12372 as in effect on September 17, 1983, to determine whether such assistance applications or development projects would be consistent with and further the purposes and objectives of the program prepared under this subsection. For the purposes of this paragraph, identification shall not be limited to the assistance programs or development projects subject to the Executive Order 12372 but may include any programs listed in the most recent Catalog of Federal Domestic Assistance which may have an effect on the purposes and objectives of the State's nonpoint source pollution management program.

(2) In developing the nonpoint source management program required by this section, the State (A) may rely upon information developed pursuant to sections 208, 303(e), 304(f), 305(b), and 314, and

other information as appropriate, and (B) may utilize appropriate elements of the waste treatment management plans developed pursuant to section 208(b), to the extent such elements are consistent with and fulfill the requirements of this section.

(3) In developing and implementing the management program described in this subsection, a State may make use of local agencies or organizations.

(b)(1) Within six months of the date of receipt of a proposed nonpoint source management program, the Administrator shall, after notice and opportunity for public comment, make a determination whether the State's proposed management program meets the requirements of subsection (a)(1) of this section.

(2) If the Administrator determines that the proposed management program does not meet the requirements of subsection (a)(1) of this section, he shall within six months of receipt of the proposed program notify the State of any revisions or modifications necessary to obtain approval. The State shall thereupon have an additional three months to submit is revised management program and the Administrator shall approve or disapprove such revised program within three months of receipt.

(3) Pursuant to paragraph (1) or (2) of this subsection, the Administrator shall approve those State management programs that he determines meet the requirements of subsection (a)(1) of this section.

(4) If the Administrator fails to approve the State management program pursuant to paragraph (1) of this subsection or fails to notify the State of necessary revisions pursuant to paragraph (2) of this subsection within six months of receipt of the State program, or if he fails to approve or disapprove the program pursuant to paragraph (2) of this subsection within three months of receipt of the revised program, the program shall be deemed to have been approved by the Administrator.

(c) If a State fails to submit a nonpoint source pollution management program that the Administrator determines meets the requirements of subsection (a)(1) of this section, the Administrator shall notify such State, and within thirty months after the date of enactment of the Clean Water Act Amendments of 1985, after consultation with appropriate Federal and State agencies and other interested persons, carry out the requirements of subsections (a)(1) (A) and (B) of this section for such State. Upon completion of this requirement, the Administrator shall report to Congress on his actions pursuant to this section.

(d)(1) The Administrator shall award grants, subject to such terms and conditions as the Administrator considers appropriate, to assist States in the implementation of management programs which have been approved pursuant to subsection (b) of this section. Such grants shall not exceed 75 per centum of the costs of implementing the program in any fiscal year and shall be made on condition that non-Federal sources provide at least 25 per centum of the costs that receive funding under this subsection.

(2)(A) Two-thirds of the funds appropriated in any fiscal year for grants under this section shall be made available for allotment to the several States in accordance with the following table:

State	Percentage allotment
Alabama	1.56
Alaska	.50
Arizona	1.95
Arkansas	1.43
California	6.37
Colorado	2.19
Connecticut	.68
Delaware	.50
District of Columbia	.50
Florida	2.66
Georgia	2.04
Hawaii	.50
Idaho	1.20
Illinois	4.03
Indiana	2.07
Iowa	2.39
Kansas	2.78
Kentucky	1.32
Louisiana	1.56
Maine	.55
Maryland	1.03
Massachusetts	1.25
Michigan	2.67
Minnesota	2.43
Mississippi	1.40
Missouri	2.44
Montana	2.46
Nebraska	2.26
Nevada	1.78
New Hampshire	.50
New Jersey	1.62
New Mexico	1.93
New York	4.22
North Carolina	1.90
North Dakota	2.14
Ohio	3.14
Oklahoma	2.05
Oregon	1.75
Pennsylvania	2.97
Rhode Island	.50
South Carolina	1.09
South Dakota	1.94
Tennessee	1.50
Texas	8.08
Utah	1.36
Vermont	.50
Virginia	1.60
Washington	1.58
West Virginia	.60
Wisconsin	1.90
Wyoming	1.39
Guam	.10
Northern Marianas	.10
Pacific Trust Territories	.10
Puerto Rico	.72
Samoa	.10
Virgin Islands	.10
Total	100.00

(B) One-third of the funds appropriated in any fiscal year for grants under this section shall be made available to the Administrator who shall make grants in response to applications from States if the Administrator determines such grants are necessary and appropriate to assist such States in—

(i) controlling particularly difficult or serious nonpoint source pollution problems, including, but not limited to, problems resulting from mining activities;

(ii) implementing innovative methods or practices for controlling nonpoint sources of pollution, including both regulatory or nonregulatory programs where the Administrator deems appropriate;

(iii) controlling insterstate nonpoint source pollution problems;

(iv) assessing the relationship between nonpoint source pollution and ground water contamination; or

(v) providing financial assistance for implementation by an Indian tribe, within the reservation, of an approved management program: Provided, That any such Inidan tribe shall be subject to all terms and conditions of this section applying to a State. Financial assistance to any one reservation under this clause shall not exceed one-third of 1 per centum of the total amount appropriated for grants for each year.

(3) The funds allotted to the States pursuant to paragraph (2)(A) of this subsection for a fiscal year shall remain available for obligation for the fiscal year for which appropriated. The amount of any such allotments not obligated by the end of such fiscal year and any unobligated funds remaining under paragraph (2)(B) of this subsection shall be realloted by the Administrator for the next fiscal year on the basis of the table in paragraph (2)(A).

(4) States may use funds from grants made pursuant to this section for financial assistance to persons only to the extent that such assistance is related to the costs of demonstration projects.

(5) No grant shall be made to a State under this section unless the Administrator determines, on the basis of information provided by the State and from other relevant sources, that the State is implementing the program satisfactorily in terms of the requirements and objectives of this section.

(6) No grant shall be made under this section to any State in any fiscal year in which the expenditure of non-Federal funds by such State for purposes comparable to the activities assisted by this section are less than the average level of such expenditures in the two fiscal years of such state next preceding the date of enactment of the Clean Water Act Amendments of 1985.

(7) The Administrator may request such information, data, and reports as he may deem necessary to make the determination of continuing eligibility for grants under this section.

(8) For the purpose of this section, there are authorized to be appropriated, to remain available until expended, $70,000,000 for the fiscal year ending September 30, 1986, $100,000,000 for the fiscal year ending September 30, 1987, and $130,000,000 for the fiscal year ending September 30, 1988.

(e) Each State shall report to the Administrator on an annual basis conerning (1) its progress in meeting the schedule of milestones submitted pursuant to subsection (a)(1)(E) of this section, and (2) to the extent that appropriate information is available, reductions in nonpoint source pollutant loading and improvements in water quality resulting from implementation of the management program.

(f) The Administrator shall

(1) transmit to the Office of Management and Budget and the appropriate Federal departments and agencies a list of those assistance programs and development projects identified by each State under subsection (a)(1)(G) for which individual assistance applications and projects will be reviewed pursuant to the procedures set forth in Executive Order 12372 as in effect on September 17, 1983. Beginning not later than sixty days after receiving notification by the Administrator, each Federal department and agency shall modify existing regulations to allow States to review individual development projects and assistance applications under the identified Federal assistance programs and shall accommodate, according to the requirements and definitions of Executive Order 12372, as in effect on September 17, 1983, the concerns of the State regarding the consistency of such applications or projects with the State nonpoint source pollution management program;

(2) collect and make available, through publications and other appropriate means, information pertaining to management practices and implementation methods, including, but not limited to, (A) information concerning the costs and relative efficiencies of best management practices for reducing nonpoint source pollution; and (B) available data concerning the relationship between water quality and implementation of various management practices to control nonpoint sources of pollution; and

(3) submit to the Congress, within thirty-six months of enactment of the Clean Water Act Amendment of 1985, a report which on the basis of information submitted by the States pursuant to the subsections (a) and (e) of this section, and other information as appropriate:

(A) describes the management programs being implemented by the States by types and amount of affected waters, categories and subcategories of nonpoint sources, and types of best management practices being implemented;

(B) describes the experiences of the States in adhering the schedules and implementing best management practices;

(C) describes the amount and purpose of grants awarded pursuant to subsection (d) of this section;

(D) identifies, to the extent that information is available, the progress made in reducing pollutant loads and improving water quality in the waters of the United States; and

(E) indicates what further actions need to be taken to attain and maintain in those waters (i) applicable water quality standards and (ii) the goals and requirement of the Act.

NATIONAL ESTUARY PROGRAM

SEC. 320. (a)(1) Whenever the Administrator determines that the attainment and maintenance of the chemical, physical, and biological integrity of an estuary requires the interstate or international control of sources of pollution to supplement existing controls, the Administrator shall convene, for a period not to exceed five years, an estuarine management conference, to—

(A) assess trends in water quality, natural resources, and uses of the estuary;

(B) collect, characterize, and assess data on toxics, nutrients, and natural resources within the estuarine zone to identify the causes of environmental problems;

(C) develop the relationship between the inplace loads and point and nonpoint loadings of pollutants to the estuarine zone and the potential uses of the zone, water quality, and natural resources;

(D) develop a comprehensive conservation and management plan that recommends priority corrective actions and compliance schedules addressing point and nonpoint sources of pollution to restore and maintain the chemical, physical, and biological integrity of the estuary, including restoration and maintenance of water quality, a balanced indigenous population of shellfish, fish and wildlife, and recreational activities in the estuary, and assure that the designated uses of the estuary are protected;

(E) develop plans for the coordinated implementation of the plan by the States as well as Federal and local agencies participating in the conference;

(F) monitor the effectiveness of actions taken pursuant to the plan; and

(G) review any Federal financial assistance program or federal development project subject to the requirements of Executive Order 12372, as in effect on September 17, 1983, to determine whether such assistance program or project would be consistent with and further the purposes and objectives of any plan prepared under this section. For purposes of this subparagraph, these programs and projects shall not be limited to the assistance programs or development projects subject to Executive Order 12372, but may include any programs listed in the most recent Catalog of Federal Domestic Assistance which may have an effect on the purposes and objectives of any plan developed pursuant to this section.

(b) The members of a management conference convened under this section shall include, at a minimum, the Administrator and representatives of—

(1) each State and foreign nation located in whole or in part in the estuarine zone of the estuary for which the conference is convened;

(2) international, interstate, or regional agencies having jurisdiction over all or a significant part of the estuary;

(3) each interested Federal agency, as determined appropriate by the Administrator;

(4) local governments within the estuarine zone, as determined appropriate by the Administrator; and

(5) affected industries, public and private educational institutions and the general public in the estuarine zone.

(c) Prior to developing a comprehensive conservation and management plan under this section, the management conferees shall survey and use existing reports, data, and studies as well as local master or regional plans relating to the estuary that have been de-

veloped by or made available to Federal, interstate, international, State, or local agencies.

(d)(1) Not later than ninety days after the completion of a conservation and management plan, the Administrator shall, if the plan satisfies the purposes of this section and the affected Governor or Governors concur, approve such plan.

(2) Upon approval of a conservation and management plan under this section, funds authorized to be appropriated under titles II and VI and section 319 of this Act may be used in accordance with the applicable requirements of this Act, to assist States with the implementation of such plan.

(e) There are authorized to be appropriated to the Administrator not to exceed $12,000,000 per fiscal year for each of the fiscal years 1986, 1987, 1988, and 1989, for:

(1) expenses related to the administration of management conferences under this section, not to exceed 10 per centum of the amount appropriated under this paragraph;

(2) grants to State, interstate or regional water pollution control agencies for research, surveys, studies, monitoring, modeling, and other technical work necessary for the development of a conservation and management plan under this section: Provided, That such grants shall not exceed 75 per centum of the costs of such technical work and shall be made on condition that non-Federal sources provide at least 25 per centum of the costs that receive funding under this paragraph; and

(3) the costs of monitoring the implementation of a conservation and management plan. Such monitoring shall be done by the management conference or, in any case in which the conference has expired or been terminated, by the Administrator.

(f) Any State, interstate, or regional agency that receives a grant under subsection (e) shall report to the Administrator not later than eighteen months after receipt of such grant and biennially thereafter on the progress being made under this section.

(g) For the purposes of this section, the terms "estuary" and "estuarine zone" shall have the same meanings such terms have in section 104(n)(4) of this Act, except that the term "estuarine zone" shall include those portions of tributaries draining into the estuary up to the historic height of migration of anadromous fish or the historic head of tidal influence, whichever is higher.

TITLE IV—PERMIT AND LICENSES

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NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM

SEC. 402. (a)(1) Except as provided in sections 318 and 404 of this act, the Administrator may, after opportunity for public hearing issue a permit for the discharge of any pollutant, or combination of pollutants, notwithstanding section 301(a), upon condition that such discharge will meet either *(A)* all applicable requirements under sections 301, 302, 306, 307, 308, and 403 of this Act, or *(B)* prior to the taking of necessary implementing actions relating to

all such requirements, such conditions as the Administrator determines are necessary to carry out the provisions of this Act.

* * * * * * *

(b) At any time after the promulgation of the guidelines required by subsection (h)(2) of section 304 of this Act, the Governor of each State desiring to administer its own permit program *or part of a permit program in accordance with paragraph (10) of this subsection,* for discharges into navigable waters within its jurisdiction may submit to the Administrator a full and complete description of the program it proposes to establish and administer under State law or under an interstate compact. In addition, such State shall submit a statement from the attorney general (or the attorney for those State water pollution control agencies which have independent legal counsel), or from the chief legal officer in the case of an interstate agency, that the laws of such State, or the interstate compact, as the case may be, provide adequate authority to carry out the described program. The Administrator shall approve each such submitted program unless he determines that adequate authority does not exist:

(1) To issue permits which—

(A) * * *

(E) shall be reconsidered for termination or modification at any time a State other than that in which the source is located provides notice that the permitted discharge is causing a substantial violation of a water quality requirement (including any standard) of such State or adversely affecting the public health of such State and seeks a modification of such permit;

* * * * * * *

(10) In the event a Governor submits a plan to administer part of a permit program, the Administrator may approve such plan upon a showing that—

(A)(i) the plan provides for administration of permit program components which represents a significant and identifiable part of the State program authorized by this section; and

(ii) the plan provides for and the State agrees to make all reasonable efforts to assume administration of the remainder of the program by a specific future date not to exceed five years from submission of the State's initial plan; or

(B)(i) the plan provides for administration of a permit program for one or more discharge categories such as Federal facilities, municipal or industrial categories, or any other category of discharges which represents a significant and identifiable part of the permit program in the State; and

(ii) the plan covers all categories of discharges under the jurisdiction of the State agency or department responsible for administering the plan and represents a complete permit program for all categories of discharges contained in the plan. For purposes of the preceding sentence "a complete permit program." means one for which adequate authority exists to carry out each of the activities listed in paragraphs (1) through (9) of this subsection.

(c)(1) Not later than ninety days after the date on which a State has submitted a program (or revision thereof) pursuant to subsection (b) of this section, the Administrator shall suspend the issuance of permits under subsection (a) of this section as to those navigable waters *as to those activities and discharges* subject to such program unless he determines that the State permits program does not meet the requirements of section (b) of this section or does not conform to the guidelines issued under section 304(i) (2) of this Act. If the Administrator so determines, he shall notify the State of any revisions or modifications necessary to conform to such requirement or guidelines.

* * * * * * *

(4) In the event a determination is made (A) by a State to return adminsitration of the program to the Administrator or (B) by the Administrator to withdraw approval pursuant to paragraph (3) of this subsection, return of administration or withdrawal of approval may only be made of the entire program currently being administered by the State.

(a)(i) * * *

(2) *(A)* No permit shall issue **[**A**]***(i)* if the Administrator within ninety days of the date of his notification under subsection (b)(5) of this section objects in writing to the issuance of such permit, or **[**B**]***(ii)* if the Administrator within ninety days of the date of transmittal of the proposed permit as being outside the guidelines and requirements of this Act. Whenever the Administrator objects to the issuance of a permit under this paragraph such written objection shall contain a statement of the reasons for such objection and the effluent limitations and conditions which such permit would include if it were issued by the Administrator.

(B) In the case of the failure of any State to accept the recommendations of another State whose waters may be affected by the issuance of a permit, submitted in accordance with subsection (b)(5), the Administrator shall determine within 90 days following written objection to the Administrator by the State whose recommendations were not accepted, whether any substantial violation of a water quality requirement (including any standard) of the affected State or adverse effect on public health of the affected State will result from the issuance of such permit. If the Administrator so determines, the Administrator shall object to the issuance of such permit or provide specific modifications to such permit. Any such determination shall be provided in writing to the affected State and such determination or such objection shall be reviewable in the appropriate Circuit Court of Appeals under section 509(b) of this Act as the issuance of denial of a permit under section 402.

* * * * * * *

(l)*(1)* The Administrator shall not require a permit under this section for discharges composed entirely of return flows from irrigated agriculture, nor shall the Administrator directly or indirectly, require any State to require such a permit.

(2) The Administrator shall not require a permit under this section nor impose effluent limitations, nor shall the Administrator directly or indirectly require any State to require such a permit or

impose such limitations, for discharges of stormwater runoff from oil or gas exploration, production, processing, or treatment operations, composed entirely of flows from conveyances or systems of conveyances (including pipes, conduits, ditches, and channels) used for collecting and conveying precipitation runoff and not contaminated with process wastes, toxic pollutants above background levels, hazardous substances in excess of reportable quantities, or oil or grease in excess of reportable quantities.

(m) In issuing a permit under this section, the Administrator shall not require pretreatment by dischargers of conventional pollutants identified pursuant to section 304(b)(4) of this Act as a substitute for municipal treatment adequate to meet the requirements of a permit issued under this section for a treatment works (as defined in section 212 of this Act) which is publicly owned if such discharger is in compliance with all applicable requirements of local pretreatment programs approved under subsection (b)(8) of this section. Nothing in this subsection shall affect the Administrator's authority under sections 307 and 309 of this Act, affected State and local authority under sections 307(b)(4) and 510 of this Act, relieve such treatment works of its obligations to meet requirements established under this Act, or preclude such works from pursuing whatever feasible options are available to meet its responsibility to comply with its permit under this section.

(n) In the case of effluent limitations established on the basis of subsection (a)(1)(B) of this section, a permit may not be renewed, reissued or modified solely on the basis of effluent guidelines promulgated under section 304(b) subsequent to the original issuance of such permit, to contain effluent limitations which are less stringent than the comparable effluent limitations in the previous permit. If the source has installed the treatment facililities required to meet the effluent limitations in the previous permit and has properly operated and maintained the facilities but has nevertheless been unable to achieve the previous effluent limitations, the limitations in the renewed, reissued or modified permit may reflect the level of pollutant control actually achieved (but shall not be less stringent than required by effluent guidelines in effect at the time of permit renewal, reissuance or modification).". In the case of effluent limitations established on the basis of section 301(b)(1)(C) or section 303(d) or (e), a permit may be renewed, reissued, or modified on the basis of subsequently revised waste load allocations under section 303(d) to contain effluent limitations which are less stringent than the comparable effluent limitations in the previous permit only in compliance with section 303(d)(5).

PERMITS FOR DREDGED OR FILL MATERIAL

SEC. 404. (a) * * *

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(s)(1) * * *

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[(4)(A) Any person who willfully or negligently violates any condition or limitation in a permit issued by the Secretary under this section shall be punished by a fine of not less than $2,500 nor more

than $25,000 per day of violation, or by imprisonment for not more than one year, or by both. If the conviction is for a violation committed after a first conviction of such person under this paragraph, punishment shall be by a fine of not more than $50,000 per day of violation, or by imprisonment for not more than two years, or by both.

[(B) For the purposes of this paragraph, the term "person" shall mean, in addition to the definition contained in section 502(5) of this Act, any responsible corporate officer.]

[(5)] *(4)* Any person who violates any condition or limitation in a permit issued by the Secretary under this section, and any person who violates any order issued by the Secretary under paragraph (1) of this subsection, shall be subject to a civil penalty not to exceed [$10,000 per day of such violation.] *$25,000 per day for each violation. In determining the amount of a civil penalty the court shall consider the seriousness of the violation or violations, the economic benefit (if any) resulting from the violation, any history of such violations, any good-faith efforts to comply with the applicable requirements, the economic impact of the penalty on the violator, and such other matters as justice may require.*

DISPOSAL OF SEWAGE SLUDGE

SEC. 405. (a) Notwithstanding any other provision of this Act, or of any other law, in the case where the disposal of sewage sludge resulting from the operation of a treatment works as defined in section 212 of this Act (including the removal of in-place sewage sludge from one location and its deposit at another location) would result in any pollutant from such sewage sludge entering the navigable waters, such disposal is prohibited except in accordance with a permit issued by the Administrator under section 402 of this Act.

(b) The Administrator shall issue regulations governing the issuance of permits for the disposal of sewage sludge subject to subsection (a) of this section and section 402 of this Act. Such regulations shall require the application to such disposal of each criterion, factor, procedure, and requirement applicable to a permit issued under section 402 of this title.

(c) Each State desiring to administer its own permit program for disposal of sewage sludge subject to subsection (a) of this section within its jurisdiction may do so, in accordance with section 402 of this Act.

(d)*(1)* The Administrator, after consultation with appropriate Federal and State agencies and other interested persons, shall develop and publish, within one year after the date of enactment of this subsection and from time to time thereafter, regulations providing guidelines for the disposal of sludge and the utilization of sludge for various purposes. Such regulations shall—

[(1)] *(A)* identify uses for sludge, including disposal;

[(2)] *(B)* specify factors to be taken into account in determining the measures and practices applicable to each such use or disposal (including publication of information on costs);

[(3)] *(C)* identify concentrations of pollutants which interfere with each such use or disposal.

The Administrator is authorized to revise any regulation issued under this subsection.

(2)(A)(i) Not later than April 1, 1986, the Administrator shall identify those toxic pollutants which, on the basis of available information on their toxicity, persistence, concentration, mobility, or potential for exposure, may be present in sewage sludge in concentrations which may adversely affect public health or the environment, and propose regulations specifying acceptable management practices for sewage sludge containing each such toxic pollutant and establishing numerical limitations for each such pollutant for each use identified under paragraph (1)(A).

(ii) Not later than March 1, 1987, and after opportunity for public hearing, the Administrator shall promulgate the regulations required by subparagraph (A)(i).

(B)(i) Not later than February 1, 1987, the Administrator shall identify those toxic pollutants not identified under subparagraph (A)(i) which may be present in sewage sludge in concentrations which may adversely affect public health or the environment, and propose regulations specifying acceptable management practices for sewage sludge containing each such toxic pollutant and establishing numerical limitations for each pollutant for each such use identified under paragraph (1)(A).

(ii) Not later than December 15, 1987, the Administrator shall promulgate the regulations required by subparagraph (B)(i).

(C) The management practices and numerical criteria established under subparagraphs (A) and (B) shall be adequate to protect public health and the environment from any reasonably anticipated adverse effects of each pollutant. Such regulations shall require compliance no later than twelve months after their publication, unless such regulations require the construction of new pollution control technology, in which case the regulations shall require compliance as expeditiously as practicable but in no case later than two years from the date of their publication.

(D) For purposes of this subparagraph, if, in the judgment of the Administrator, it is not feasible to prescribe or enforce a numerical limitation for a pollutant identified under this paragraph, the Administrator may instead promulgate a design, equipment, management practice, or operational standard, or combination thereof, which in the judgment of the Administrator is adequate to protect public health and the environment from any reasonably anticipated adverse effects of such pollutant.

(E) Prior to the promulgation of the regulations required by subparagraphs (A) and (B), the Administrator shall impose conditions in permits issued to publicly owned treatment works under section 402 of this Act or take such other measures as the Administrator deems appropriate to protect public health and the environment from any adverse effects which may occur from toxic pollutants in sewage sludge.

(F) Nothing in this section authorizes the establishment of any requirement or time for compliance which is less stringent than required by any other law.

[(e) The determination of the manner of disposal or use of sludge is a local determination except that it shall be unlawful for the owner or operator of any publicly owned treatment works to dis-

pose of sludge from such works for any use for which guidelines have been established pursuant to subsection (d) of this section, except in accordance with such guidelines.]

(e) The determination of the manner of disposal or use of sludge is a local determination, except that it shall be unlawful for any person to dispose of sludge from a publicly owned treatment works or any other treatment works treating primarily domestic sewage (but not including privately owned treatment works operated in conjunction with industrial manufacturing and processing facilities) for any use for which regulations have been established pursuant to subsection (d) of this section, except in accordance with such regulations.

(f)(1) Any permit issued under section 402 of this Act to a publicly owned treatment works or any other treatment works treating primarily domestic sewage (but not including privately owned treatment works operated in conjunction with industrial manufacturing and processing facilities) shall include requirements for the use and disposal of sludge that implement the regulations established pursuant to subsection (d) of this section, unless such requirements have been included in a permit issued under the appropriate provisions of subtitle C of the Solid Waste Disposal Act, part C of the Safe Drinking Water Act, the Marine Protection, Research and Sanctuaries Act of 1972, or the Clean Air Act, or under State permit programs approved by the Administrator, where the Administrator determines that such programs assure compliance with any applicable requirements of this section. Not later than December 15, 1985, the Administrator shall promulgate procedures for approval of State programs pursuant to this paragraph.

(2) In the case of a treatment works described in paragraph (1) that is not subject to section 402 of this Act and to which none of the other above listed permit programs nor approved State permit authority apply, the Administrator may issue a permit to such treatment works solely to impose requirements for the use and disposal of sludge that implement the regulations established pursuant to subsection (d) of this section. The Administrator shall include in the permit appropriate requirements to assure compliance with the regulations established pursuant to subsection (d) of this section. The Administrator shall establish procedures for issuing permits pursuant to this paragraph.

TITLE V—GENERAL PROVISIONS

* * * * * * *

GENERAL DEFINITIONS

SEC. 502. Except as otherwise specifically provided, when used in this Act:

(1) * * *

* * * * * * *

(20) the term "Indian tribe" means any Indian tribe, band, nation, or other organized group or community (including any Alaska Native village, as defined in section 113(g), but not including any Alaska Native regional or village corporation) which is rec-

ognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

CITIZEN SUITS

SEC. 505. (a) * * *

* * * * * * *

(e) *(1)* Nothing in this section shall restrict any right which any person (or class of persons) may have under any statute or common law to seek enforcement of any effluent standard or limitation or to seek any other relief (including relief against the Administrator or a State agency).

(2) Nothing in this Act shall affect or modify in any way the liabilities of any person under other Federal statutes for damages caused by noncompliance with any requirement of this Act or any permit issued under this Act.

(3) In any case involving the application of State common or statutory law to an instance where a discharge of pollutants arising in another State is alleged to have an adverse effect on the public health or welfare or the attainment of any water quality requirement of such State or municipality, a State or municipality shall be considered a citizen of such State for the purpose of filing an action in, or seeking removal to, a Federal district court to section 1332 of title 28, United States Code.

(f) For purposes of this section, the term "effluent standard or limitation under this Act" means (1) effective July 1, 1973, an unlawful act under subsection (a) of section 301 of this Act; (2) an effluent limitation or other limitation under section 301 or 302 of this Act; (3) standard or performance under section 306 of this Act; (3) prohibition, effluent standard or pretreatment standards under section 307 of this Act; (5) certification under section 401 of this Act; [or] (6) a permit or condition thereof issued under section 402 of this Act, which is in effect under this Act (including a requirement applicable by reason of section 313 of this Act)*; or (7) a regulation under section 405(d) of this Act.*

ADMINISTRATIVE PROCEDURE AND JUDICIAL REVIEW

SEC. 509. (a)(1) * * *

* * * * * * *

(b)(1) review of the Administrator's action (A) in promulgating any standard of performance under section 306, (B) in making any determination pursuant to section 306(b)(1)(C), (C) in promulgating any effluent standard, prohibition, or pretreatment standard under section 307, (D) in making any determination as to a State permit program submitted under section 402(b), (E) in approving promulgating any effluent limitation or other limitation under section 301, 302, [or 306,] *306, or 405,* and (F) in issuing or denying any permit under section 402, may be had by any interested person in the Circuit Court of Appeals of the United States for the Federal judicial district in which such person resides or [transacts such business] *transacts business which is directly affected by such action* upon application by such person. Any such application shall be made within ninety days from the date of such determination,

approval, promulgation, issuance or denial, or after such date only if such application is based solely on grounds which arose after such ninetieth day.

* * * * * * *

(3)(A) If applications for review of the same agency action have been filed under paragraph (1) of this subsection in two or more Circuit Courts of Appeals of the United States and the Administrator has received written notice of the filing of one or more applications within thrity days or less after receiving written notice of the filing of the first application, then the Administrator shall promptly advise in writing the Administrative Office of the United States Courts that applications have been filed in two or more Circuit Courts of Appeals of the United States, and shall identify each court for which he has written notice that such applications have been filed within thirty days or less of receiving written notice of the filing of the first such application. Pursuant to a system of random selection devised for this purpose, the Administrative Office thereupon shall, within three business days of receiving such written notice from the Administrator, select the court in which the record shall be filed from among those identified by the Administrator. Upon notification of such selection, the Administrator shall promptly file the record in such court. For the purpose of review of agency action which has previously been remanded to the Administrator, the record shall be filed in the Circuit Court of Appeals of the United States which remanded such action.

(B) Where applications have been filed under paragraph (1) of this subsection in two or more Circuit Courts of Appeals of the United States with respect to the same agency action and the record has been filed in one of such courts pursuant to paragraph (3)(A), the other courts in which such applications have been filed shall promptly transfer such applications to the Circuit Court of Appeals of the United States in which the record has been filed. Pending selection of a court pursuant to paragraph (3)(A), any court in which an applicantion has been filed under paragraph (1) of this subsection may postpone the effective date of the agency action until fifteen days after the Administrative Office has selected the court in which the record shall be filed.

(C) Any court in which an application with respect to any agency action has been filed under paragraph (1) of this subsection, including any court selected pursuant to paragraph (3)(A), may transfer such application to any other Circuit Court of Appeals of the United States for the convenience of the parties or otherwise in the interest of justice.

(4) In any judicial proceeding under this subsection, the court may award costs of litigation (including reasonable attorney and expert witness fees) to any prevailing or substantially prevailing party whenever it determines that such award is appropriate.

OTHER AFFECTED AUTHORITY

SEC. 511. (a) * * *

* * * * * * *

(e) Any State or municipality the water quality of which is adversely affected by pollutants from another State may petition the Administrator who, upon determining on the record after opportunity for Agency hearing pursuant to 5 U.S.C. 554, 556, and 557 that such pollution is causing a substantial violation of a water quality requirement (including any standard) of such State or adversely affecting the public health of such State, shall issue an order within 90 days restraining any person causing or contributing to such pollulution or providing such other relief as is appropriate, taking into account the goals and requirements of this Act and other equitable considerations. In no case shall such order or other relief based solely on this subsection supersede or abrogate rights to quantities of water which have been established by interstate water compacts, Supreme Court decrees, or State water laws. This subsection shall not apply in any case in which section 402(d)(2)(B) or section 402 (b)(1)(F) is available, nor to any pollution which is subject to the Colorado River Salinity Control Act of 1974, nor to any water pollution which results from emissions from mobile or stationary sources which are regulated under the Clean Air Act.

REPORTS TO CONGRESS

SEC. 516. (a) * * *

* * * * * * *

(f) The Administrator shall submit to the Congress by February 10, 1990, a report on the financial status and operations of Water Polution Control Revolving Funds established by the States in accordance with title VI of this Act. The Administrator, in cooperation with the States, including water pollution control agencies and other water pollution control planning and financing agencies, shall include in such report the following:

(1) an inventory of the facilities that are in significant noncompliance with the enforceable requirements of this Act;

(2) an estimate of the cost of construction for such facilities that require construction to meet such requirements;

(3) an assessment of the availability of sources of funds for financing such needed construction, including an estimate of the amount of funds available for loans through September 30, 1999, from the Water Pollution Control Revolving Funds established by the States under title VI of this Act;

(4) an assessment of the operations, loan portfolio and loan conditions of Water Pollution Control Revolving Funds established by the States under title VI of this Act;

(5) an assessment of the effect on user charges of the assistance provided by Water Pollution Control Revolving Funds established by the States under title VI, compared to assistance under title II of this Act; and

(6) an assessment of the efficiency of the operation and maintenance of treatment works constructed with financial assistance under titles II and VI of this Act.

GENERAL AUTHORIZATION

SEC. 517. There are authorized to be appropriated to carry out this Act, other than sections 104, 105, 106(a), 107, 108, 112, 113, 114, 115, 206, 207, 208 (f) and (h), 209, 304, 311 (c), (d), (i), (l), and (k), 314, 315, and 317, $250,000,000 for the fiscal year ending June 30, 1973, $300,000,000 for the fiscal year ending June 30, 1974, $350,000,000 for the fiscal year ending June 30, 1975, $100,000,000 for the fiscal year ending September 30, 1977, $150,000,000 for the fiscal year ending September 30, 1978, $150,000,000 for the fiscal year ending September 30, 1979, $150,000,000 for the fiscal year ending September 30, 1980, $150,000,000 for the fiscal year ending September 30, 1981, [and] $160,000,000 for the fiscal year ending September 30, 1982, *and $160,000,000 per fiscal year for the fiscal years ending September 30, 1986, September 30, 1987, September 30, 1988, and September 30, 1989.*

TITLE VI—GRANTS FOR WATER POLLUTION CONTROL REVOLVING FUNDS

AUTHORIZATION, ALLOTMENT, AWARD, AND PAYMENT

SEC. 601. (a) There are hereby authorized to be appropriated the following sums to carry out the purposes of this title:

(1) $1,200,000,000 per fiscal year for the fiscal years 1989 and 1990;

(2) $2,400,000,000 for the fiscal year 1991;

(3) $1,800,000,000 for the fiscal year 1992;

(4) $1,200,000,000 for the fiscal year 1993; and

(5) $600,000,000 for the fiscal year 1994.

(b) Sums appropriated to carry out this title for each fiscal year shall be allotted by the Administrator in accordance with section 205(c) of this Act.

(c) Sums allotted to the States for a fiscal year shall be available for a grant award under subsection (d) during the fiscal year for which authorized. The amount of any allotment not obligated by the end of such fiscal year shall be immediately reallotted by the Administrator on the basis of the same ratio as is applicable to sums allotted under title II of this Act for the next fiscal year, except that none of the funds reallotted by the Administrator will be allotted to any State which failed to obligate any of the funds being reallotted.

(d) If a State has entered into a grant agreement with the Administrator as provided in section 602 of this title, the Administrator is authorized to make a capitalization grant to the State from funds available for obligation under this title.

(e) From funds obligated for a given fiscal year pursuant to subsection (d) of this section, quarterly installment payments shall be made in accordance with the schedule of payments established under section 602(b)(2) of this title.

(f) If the Administrator determines that a State has not complied with agreements under section 602, or requirements of this title, the Administrator shall notify the State of such noncompliance and the necessary corrective action. If the State does not take such corrective action by the sixtieth day after the date the State receives notice, the

Administrator shall withhold additional payments to the State until the Administrator is satisfied that the State has taken the necessary corrective action.

(g) If the Administrator is not satisfied that adequate corrective actions have been taken by the State within twelve months of the notice provided under subsection (f) of this section, the payments withheld by the Administrator shall be made available for reallotment under subsection (c) of this section.

CAPITALIZATION GRANT AGREEMENTS WITH STATES

SEC. 602. (a) To receive a capitalization grant under this title, a State shall enter into an agreement with the Administrator which shall include but not be limited to the specifications set forth in subsection (b) of this section.

(b) The Administrator shall enter into an agreement with a State only after the State has established to the satisfaction of the Administrator that—

(1) the State has established a Water Pollution Control Revolving Fund, as defined in section 603 of this title;

(2) the State has agreed to accept grant payments under this title in accordance with a payment schedule established by the Administrator, and has agreed to deposit all such payments in the dedicated revolving fund;

(3) the State has deposited in the fund or has agreed to deposit in the fund, from State moneys, an amount equal to at least 15 per centum of the total of all capitalization grants, so that such necessary matching deposits are made no later than the date of each grant payment under the provisions of paragraph (2) of this subsection;

(4) the State has agreed to make binding loan commitments in an amount equal to 100 per centum of the amount of the grant payments within one year of the receipt of the quarterly payment of such funds;

(5) the State has made adequate assurances through submission of an intended use report under section 604(c) of this title that (A) all funds available in the Water Pollution Control Revolving Fund will be committed in an expeditious and timely manner, (B) treatment works projects that are constructed in whole or in part prior to fiscal year 1995 with funds directly made available by capitalization grants under this title or section 205(m) to the State Water Pollution Control Revolving Fund will meet the same requirements applicable to grant projects funded under title II, and (C) such funds will first be used to assure maintenance of progress in the completion of all projects needed to meet the enforceable deadlines, goals, and requirements of this Act;

(6) in addition to meeting the requirements of this title, the State has made assurances that it will commit or expend the payments so received in accordance with laws and procedures applicable to the commitment or expenditure of revenue of the State;

(7) in carrying out the requirements of section 604 of this title, the State will use accounting, audit, and fiscal procedures con-

forming to generallly accepted government accounting standards;

(8) the State will require as a condition of making a loan that recipients will maintain project accounts in accordance with generally accepted government accounting standards; and

(9) the State will make annual reports to the Administrator on the actual use of funds in accordance with section 604(d) of this title.

STATE WATER POLLUTION CONTROL REVOLVING FUNDS

SEC. 603. (a) To be eligible for an award of a grant under section 601 of this title, each State shall establish a Water Pollution Control Revolving Fund, administered by an instrumentality of the State with powers and limitations including those specified in subsections (b), (c), and (d) of this section.

(b) The amounts of funds available to the Water Pollution Control Revolving Fund shall be dedicated solely to providing financial assistance (1) to any municipality, intermunicipal, interstate, or State agency for construction of publicly owned treatment works (as defined in section 212(2) of title II of this Act) and (2) for the implementation of management programs established under sections 319 and 320. The fund shall be established, maintained, and credited with repayments, and the fund balance shall be available in perpetuity for this purpose.

(c) The instrumentality of the State administering the Water Pollution Control Revolving Fund shall be authorized to use the fund to make loans, on the condition that—

(1) such loans are made at or below market interest rates, including interest free loans, at terms not to exceed twenty years;

(2) annual principal payments shall commence not later than one year after completion of any project and all loans shall be fully amortized not later than twenty years after project completion;

(3) the recipient of a loan shall establish a dedicated source of revenue for repayment of loans; and

(4) the fund shall be credited with all repayment of principal and interest on all loans.

(d) Except as otherwise limited by State law, a Water Pollution Control Revolving Fund may be used—

(1) to buy or refinance the debt obligation of municipalities and intermunicipal and interstate agencies within the State at or below market rates, where such debt obligations were incurred after March 7, 1985;

(2) to guarantee, or purchase insurance for, local obligations where such action would improve credit market access or reduce interest rates;

(3) as a source of revenue or security for the payment of principal and interest on revenue or general obligation bonds issued by the State if the proceeds of the sale of such bonds are deposited in the Water Pollution Control Revolving Fund;

(4) to provide loan guarantees for similar revolving funds established by municipalities or intermunicipal agencies;

(5) to earn interest on fund accounts; and

(6) for the reasonable costs of administering the fund and conducting activites under this title provided that such amounts shall not exceed 4 perr centum of all grant awards to such fund under section 601(d).

AUDITS, REPORTS, AND FISCAL CONTROLS

SEC. 604. (a) Each State electing to establish a Water Pollution Control Revolving Fund under this title shall establish fiscal controls and accounting procedures sufficient assure proper accounting during appropriate accounting periods for—

(1) payments received by the fund;

(2) disbursements made by the fund; and

(3) fund balances at the beginning and end of the accounting period.

(b) The Administrator shall conduct, or require each State to have conducted, not less than annually, an independent audit to review the operations of each Water Pollution Control Revolving Fund. Such audits shall be conducted by an entity independent of the State, and in accordance with the Comptroller General's standards for auditing government organizations, programs, activities, and functions. An audit under this subsection shall be completed in such time and manner as deemed necessary or appropriate by the Administrator to carry out the purposes of this title.

(c)(1) Each State shall, on an annual basis, prepare a plan on the intended uses of the amounts available to the fund. The plan shall include—

(A) a description of the short and long term goals and objectives of the State's Water Pollution Control Revolving Fund;

(B) information on the activities to be supported, including a description of project categories, discharge requirements under titles III and IV, terms of financial assistance, and communities served;

(C) assurances and specific proposals for meeting the requirements of section 602(b) (4) and (5) of this title; and

(D) the criteria and method established for the distribution of funds.

(2) To meet the requirements of this subsection and to facilitate comments from interested local governments and persons on the use of funds, a State may adapt or use priority systems and lists developed under section 216 of this Act.

(d) Beginning the first fiscal year after the receipt of payments under section 601(e) of this title, the State shall provide an annual report to the Administrator describing how the State has met the goals and objectives of the previous fiscal year as identified in the plan prepared for the previous fiscal year pursuant to subsection (c) of this section, including identification of loan recipients, loan amounts, and loan terms.

(e) The Administrator shall conduct an anual review of each State plan and report prepared under subsections (c) and (d) of this section, and other such materials as are considered necessary and appropriate in carrying out the purposes of this title. After reasonable notice by the Administrator to the State or the recipient of a loan from a Water Pollution Control Revolving Fund, the State or

loan recipient shall make available to the Administrator records the Administrator reasonably requires to review and determine compliance with this title.

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